Nos. 03-725

Supreme Court, U.S.
FILED
JUL 29 2004
OFFICE OF THE CLERK

IN THE

# Supreme Court of the United States

DAVID B. PASQUANTINO,
CARL J. PASQUANTINO &
ARTHUR HILTS,
*Petitioners,*

v.

UNITED STATES OF AMERICA
*Respondent.*

**On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit**

## JOINT APPENDIX

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June 29, 2004

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CERTIORARI GRANTED APRIL 5, 2004

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UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

[Filed 6/22/01]

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Case No. 01-4465

UNITED STATES OF AMERICA,
*Plaintiff-Appellee,*

v.

ARTHUR HILTS,
*Defendant-Appellant.*

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**DOCKET ENTRIES**

| DATE | PROCEEDINGS |
|---|---|
| 6/22/01 | Criminal case docketed. (ldj) [01-4465] |
| 6/22/01 | ORDER FILED appointing Isaac Joe, Jr. as CJA counsel for Appellant Arthur Hilts in 01-4465 [3409273-1]. Nunc Pro Tunc Date: 6/15/01. Copies to all counsel. [01-4465] (ldj) [01-4465] |
| 6/22/01 | ORDER FILED appointing Michael J. McCarthy as CJA counsel for Appellant Carl J. Pasquantino in 01-4464 [3409274-1]. Nunc Pro Tunc Date: 6/8/01. Copies to all counsel. [01-4464] (ldj) [01-4464] |
| 6/22/01 | ORDER FILED appointing Jensen E. Barber II as CJA counsel for Appellant David B. Pasquantino in 01-4463 [3409276-1]. Nunc Pro Tunc Date: 6/8/01. Copies to all counsel. [01-4463] (ldj) [01-4463] |

| DATE | PROCEEDINGS |
|---|---|
| 6/22/01 | ORDER FILED consolidating case 01-4465 01-4464 with 01-4463 [3409277-1]. Copies to all counsel. [01-4463, 01-4464, 01-4465] (ldj) [01-4463 01-4464 01-4465] |
| 6/22/01 | Docketing notice issued. [01-4463, 01-4464, 01-4465] (ldj) [01-4463 01-4464 01-4465] |
| 6/22/01 | Docketing statement filed by Appellant David B. Pasquantino in 01-4463 [3409715-1] T/S needed [Y/N]: y T/S already on file?: y. [01-4463] (ldj) [01-4463] |
| 6/22/01 | Docketing statement filed by Appellant Carl J. Pasquantino in 01-4464 [3409723-1] T/S needed [Y/N]: y T/S already on file?: n. [01-4464] (ldj) [01-4464] |
| 6/22/01 | Transcript order filed for Mary M. Zajac in 01-4464. What is being ordered: 6/8/01 sentencing; 9/7/00 motions hearing; 2/6, 2/7, 2/8, 2/12/01 trial testimony . [01-4464, 01-4463, 01-4465] (ldj) [01-4463 01-4464 01-4465] |
| 6/22/01 | Transcript order acknowledgment filed. [01-4464, 01-4463, 01-4465] Transcript due on 7/23/01 for Mary M. Zajac in 01-4464, for Mary M. Zajac in 01-4463, for Mary M. Zajac in 01-4465 . T/S certification due on 7/23/01 for Mary M. Zajac in 01-4464, for Mary M. Zajac in 01-4463, for Mary M. Zajac in 01-4465 . (ldj) [01-4463 01-4464 01-4465] |
| 6/22/01 | Transcript order filed for Lisa K. Bankins in 01-4464. What is being ordered: 2/13/01 jury instructions; 2/13/01 verdict . [01-4464, 01-4463, 01-4465] (ldj) [01-4463 01-4464 01-4465] |



| DATE | PROCEEDINGS |
|---|---|
| 6/22/01 | Transcript order acknowledgment filed. [01-4464, 01-4463, 01-4465] Transcript due on 7/23/01 for Lisa K. Bankins in 01-4464, for Lisa K. Bankins in 01-4463, for Lisa K. Bankins in 01-4465 . T/S certification due on 7/23/01 for Lisa K. Bankins in 01-4464, for Lisa K. Bankins in 01-4463, for Lisa K. Bankins in 01-4465 . (ldj) [01-4463 01-4464 01-4465] |
| 6/25/01 | Docketing statement filed by Appellant Arthur Hilts in 01-4465 [3410577-1] T/S needed [Y/N]: y T/S already on file?: n. [01-4465] (ldj) [01-4465] |
| 6/25/01 | Transcript order received from Isaac Joe for Appellant Arthur Hilts in 01-4465 and returned because of more than one court reporter listed (Counsel filed a tpo for Lisa Bankins, but is ordering trial testimony and sentencing. A different court reporter transcribed sentencing) [01-4465] New due date: 7/5/01 for Isaac Joe. (ldj) [01-4465] |
| 6/25/01 | Counsel of record form filed by Isaac Joe in 01-4465 for Appellant Arthur Hilts in 01-4465. (ldj) [01-4465] |
| 6/27/01 | Counsel of record form filed by Isaac Joe in 01-4465 for Appellant Arthur Hilts in 01-4465. (ldj) [01-4465] |
| 6/29/01 | Transcript order filed for Lisa K. Bankins in 01-4463, 01-4464, 01-4465. What is being ordered: 2/13/01. [01-4463, 01-4464, 01-4465] (ta) [01-4463 01-4464 01-4465] |

| DATE | PROCEEDINGS |
|---|---|
| 6/29/01 | Transcript order filed for Mary M. Zajac in 01-4463, 01-4464, 01-4465. What is being ordered: 9/7/00, 2/5/01-2/9/01, 2/12/01, 6/8/01. [01-4463, 01-4464, 01-4465] (ta) [01-4463 01-4464 01-4465] |
| 6/29/01 | Transcript order acknowledgment filed. [01-4463, 01-4464, 01-4465] Transcript due on 7/30/01 for Lisa K. Bankins in 01-4463, for Lisa K. Bankins in 01-4464, for Lisa K. Bankins in 01-4465 . T/S certification due on 7/30/01 for Lisa K. Bankins in 01-4463, for Lisa K. Bankins in 01-4464, for Lisa K. Bankins in 01-4465 . (ta) [01-4463 01-4464 01-4465] |
| 6/29/01 | Transcript order acknowledgment filed. [01-4463, 01-4464, 01-4465] Transcript due on 7/30/01 for Mary M. Zajac in 01-4463, for Mary M. Zajac in 01-4464, for Mary M. Zajac in 01-4465 . T/S certification due on 7/30/01 for Mary M. Zajac in 01-4463, for Mary M. Zajac in 01-4464, for Mary M. Zajac in 01-4465 . (ta) [01-4463 01-4464 01-4465] |
| 7/3/01 | Counsel of record form filed by Gregory Welsh in 01-4463, Gregory Welsh in 01-4464, Gregory Welsh in 01-4465 for Appellee US in 01-4463, Appellee US in 01-4464, Appellee US in 01-4465. (ldj) [01-4463 01-4464 01-4465] |
| 7/12/01 | Counsel of record form filed by Jensen Egerton Barber in 01-4463 for Appellant David B. Pasquantino in 01-4463. (ldj) [01-4463] |
| 7/17/01 | Counsel of record form filed by Michael Joseph McCarthy in 01-4464 for Appellant Carl J. Pasquantino in 01-4464. (ldj) [01-4464] |



| DATE | PROCEEDINGS |
|---|---|
| 7/25/01 | Certification transcript filed in district court by Mary M. Zajac in 01-4463, Mary M. Zajac in 01-4464, Mary M. Zajac in 01-4465 on 7/18/01. [01-4463, 01-4464, 01-4465] (ldj) [01-4463 01-4464 01-4465] |
| 8/6/01 | Certification transcript filed in district court by Lisa K. Bankins in 01-4463, Lisa K. Bankins in 01-4464, Lisa K. Bankins in 01-4465 on 7/30/01. [01-4463, 01-4464, 01-4465] (ldj) [01-4463 01-4464 01-4465] |
| 8/6/01 | Briefing order filed. [01-4463, 01-4464, 01-4465] Appellant(s) brief/joint appendix due 9/10/01 for David B. Pasquantino in 01-4463, for Carl J. Pasquantino in 01-4464, for Arthur Hilts in 01-4465 . (ldj) [01-4463 01-4464 01-4465] |
| 8/8/01 | Certification transcript filed in district court by Mary M. Zajac in 01-4463 on 7/18/01. [01-4463] (ldj) [01-4463] |
| 8/13/01 | Certification of ROA complete and retained in the District Court. [01-4463, 01-4464, 01-4465] (ldj) [01-4463 01-4464 01-4465] |
| 8/31/01 | Motion filed by Appellant David B. Pasquantino in 01-4463, Appellant Carl J. Pasquantino in 01-4464, Appellant Arthur Hilts in 01-4465 to extend time to file appellant(s) brief/appendix until 11/9/01 [3448295-1]. [01-4463, 01-4464, 01-4465] (ldj) [01-4463 01-4464 01-4465] |

| DATE | PROCEEDINGS |
|---|---|
| 8/31/01 | ORDER FILED granting motion to ext time to file a's br/apx [3448295-1] Appellant(s) brief/ joint appendix now due 10/1/01 for David B. Pasquantino in 01-4463, for Carl J. Pasquantino in 01-4464, for Arthur Hilts in 01-4465 . Conf aty recomm?: n. Number of days granted: 21. in 01-4463, 01-4464, 01-4465 Copies to all counsel. [01-4463, 01-4464, 01-4465] (ldj) [01-4463 01-4464 01-4465] |
| 10/2/01 | Brief and joint appendix filed by Appellant David B. Pasquantino in 01-4463, Appellant Carl J. Pasquantino in 01-4464, Appellant Arthur Hilts in 01-4465. Copies of brief: 6 it brf pages: 35 Sufficient[Y/N]?: Y. . . Copies of apx: 5 # apx pages: 365. 2-sided copying[Y/N]?: Y. Method of filing w/ court: per clerk order Date of Service on parties: 10/2/01 Type of service on parties: pm Appellee brief due 10/26/01 for US in 01-4463, for US in 01-4464, for US in 01-4465 . [01-4463, 01-4464, 01-4465] (ldj) [01-4463 01-4464 01-4465] |
| 10/2/01 | Motion filed by Appellant David B. Pasquantino in 01-4463, Appellant Carl J. Pasquantino in 01-4464, Appellant Arthur Hilts in 01-4465 for leave to file brief and joint appendix out of time as of 10/2/01 [3467002-1]. [01-4463, 01-4464, 01-4465] (ldj) [01-4463 01-4464 01-4465] |
| 10/4/01 | ORDER FILED granting motion to file br/apx out of time [3467002-1] as of 10/2/01 in 01-4463, 01-4464, 01-4465 Copies to all counsel. [01-4463, 01-4464, 01-4465] (ldj) [01-4463 01-4464 01-4465] |



| DATE | PROCEEDINGS |
|---|---|
| 10/24/01 | Brief filed by Appellee US in 01-4463, Appellee US in 01-4464, Appellee US in 01-4465. Copies of brief: 8 # brf pages: 28. Sufficient[Y/N]?: Y. . . Method of filing w/ court: pm Date of Service on parties: 10/24/01 Type of service on parties: pm [01-4463, 01-4464, 01-4465] (ldj) [01-446301-4464 01-4465] |
| 11/2/01 | Motion filed by Appellant David B. Pasquantino in 01-4463, Appellant Carl J. Pasquantino in 01-4464, Appellant Arthur Hilts in 01-4465 to extend time to file reply brief until 11/16/01 [3482784-1] [01-4463, 01-4464, 01-4465] (ldj) [01-4463 01-4464 01-4465] |
| 11/2/01 | ORDER FILED granting motion to ext time to file reply brf [3482784-1] until 11/13/01. Conf aty recomm? (Y/N): n. No. days granted (Enter # only): 7. in 01-4463, 01-4464, 01-4465 Copies to all counsel. [01-4463, 01-4464, 01-4465] (ldj) [01-4463 01-4464 01-4465] |
| 11/13/01 | Reply brief filed by Appellant David B. Pasquantino in 01-4463, Appellant Carl J. Pasquantino in 01-4464, Appellant Arthur Hilts in 01-4465. Copies of brief: 6 # brf pages: 37. Sufficient[Y/N]?: N - need motion for leave to file out of time. Method of filing w/ court: hd Date of Service on parties: 11/13/01 Type of service on parties: pm [01-4463, 01-4464, 01-4465] (ldj) [01-4463 01-4464 01-4465] |

| DATE | PROCEEDINGS |
|---|---|
| 11/13/01 | Motion filed by Appellant David B. Pasquantino in 01-4463, Appellant Carl J. Pasquantino in 01-4464, Appellant Arthur Hilts in 01-4465 to file supplemental appendix [3488406-1] Supplemental appendix tendered? (YIN): Y. [01-4463, 01-4464, 01-4465] (ldj) [01-4463 01-4464 01-4465] |
| 11/13/01 | Certificate filed by Appellant David B. Pasquantino in 01-4463, Appellant Carl J. Pasquantino in 01-4464, Appellant Arthur Hilts in 01-4465 to place volume 2 of the supplemental appendix under seal [3488425-1]. [01-4463, 01-4464, 01-4465] [01-4463, 01-4464, 01-4465] (ldj) [01-4463 01-4464 01-4465] |
| 11/14/01 | ORDER FILED granting motion to file supplemental appendix [3488406-1] in 01-4463, 01-4464, 01-4465 Copies to all counsel. [01-4463, 01-4464, 01-4465] (ldj) [01-4463 01-4464 01-4465] |
| 11/14/01 | Supplemental appendix filed by Appellant David B. Pasquantino in 01-4463, Appellant Carl J. Pasquantino in 01-4464, Appellant Arthur Hilts in 01-4465. Copies of apx: 5 of vol. 1; 4 of vol. 2 # apx pages: 20. . Sufficient[Y/N]?: Y. . SEALED[Y/N]?: Y - vol. 2 sup apx [01-4463, 01-4464, 01-4465] (ldj) [01-4463 01-4464 01-4465] |



| DATE | PROCEEDINGS |
|---|---|
| 11/14/01 | ORDER FILED granting certificate to place volume 2 of the supp. apx under seal [3488425-1] [01-4463, 01-4464, 01-4465] in 01-4463, 01-4464, 01-4465 Copies to all counsel. [01-4463, 01-4464, 01-4465] (ldj) [01-4463 01-4464 01-4465] |
| 12/14/01 | Case tentatively calendared for oral argument Term: 3/02 Place: Richmond. SUBMISSION DEADLINE: 12/26/01. (jc) [01-2045 01-2049 01-2067 01-2075 01-2092 01-2093 01-2098 01-2100 01-2101 01-2102 01-2109 01-2113 01-2122 01-2141 01-2149 01-2154 01-2161 01-2180 01-2183 01-2227 01-2228 01-4168 01-4169 01-4344 01-4463 01-4464 01-4465 01-4505 01-4513 01-4527] |
| 12/18/01 | CJA 21 Voucher received from Lantagne Legal Printing for brief and joint appendix. [01-4463] (pgl) [01-4463] |
| 12/18/01 | CJA 21 Voucher received from Lantagne Legal Printing for reply brief and supplemental appendix. [01-4463] (pgl) [01-4463] |
| 12/21/01 | Motion filed by Appellant Carl J. Pasquantino in 01-4464, Appellant David B. Pasquantino in 01-4463, Appellant Arthur Hilts in 01-4465 to continue oral argument. [3509019-1]. [01-4464, 01-4463, 01-4465] (ldj) [01-4463 01-4464 01-4465] |
| 12/21/01 | Response/answer requested to motion to continue oral argument [3509019-1] Response/answer due 12/28/01 for US in 01-4464, for US in 01-4463, for US in 01-4465 . in 01-4464, motion to continue oral argument [3509019-1] Response/ |

| DATE | PROCEEDINGS |
|---|---|
| | answer due 12/28/01 for US in 01-4464, for US in 01-4463, for US in 01-4465 . in 01-4463, motion to continue oral argument [3509019-1] Response/answer due 12/28/01 for US in 01-4464, for US in 01-4463, for US in 01-4465 . in 01-4465 [01-4464, 01-4463, 01-4465] (ldj) [01-4463 01-4464 01-4465] |
| 12/26/01 | Motion filed by Appellant Arthur Hilts in 01-4465 for specific oral argument date. Date requested: 02/25 - 02/26/02 [3509892-1]. [01-4463, 01-4464, 01-4465] (rhs) [01-4463 01-4464 01-4465] |
| 12/28/01 | Response/answer filed [3511298-1] by Appellee US in 01-4463, Appellee US in 01-4464, Appellee US in 01-4465 to motion to continue oral argument [3509019-1] in 01-4465, 01-4464, 01-4465 [01-4463, 01-4464, 01-4465] (mst) [01-4463 01-4464 01-4465] |
| 1/2/02 | ORDER FILED mooting motion for specific oral arg date [3509892-1] in 01-4463, 01-4464, 01-4465, granting motion to continue oral argument [3509019-1] Argument continued until the week of 4/2/02-4/5/02. in 95-1094, 01-4464, 01-4465 Copies to all counsel. [01-4463, 01-4464, 01-4465] (ldj) [01-4463 01-4464 01-4465] |
| 1/10/02 | CJA 21 voucher certified for payment to Lantagne Legal Printing for Reply brief & sup. apx. [01-4463] Different Than Amount Requested? (Y/N): N. [01-4463] (lrh) |



| DATE | PROCEEDINGS |
|---|---|
| 1/18/02 | Case tentatively calendared for oral argument Term: 4/02 Place: Richmond. SUBMISSION DEADLINE: 1/28/02. (jc) [01-2012 01-2014 01-2021 01-2039 01-2044 01-2050 01-2071 01-2072 01-2074 01-2078 01-2080 01-2081 01-2086 01-2087 01-2088 01-2090 01-2091 01-2100 01-2107 01-2112 01-2115 01-2134 01-2152 01-2155 01-2163 01-2183 01-2188 01-2193 01-2197 01-2200 01-2206 01-2218 01-2233 01-2235 01-2238 01-2245 01-2258 01-2277 01-2312 01-2315 01-2318 01-2335 01-2341 01-2423 01-4170 01-4177 01-4183 01-4207 01-4243 01-4309 01-4314 01-4323 01-4463 01-4464 01-4465 01-4513 01-4531 01-4569 01-4574 01-4725 01-4728 01-6115 01-6158 01-6253 01-6480 01-6603 01-7000] |
| 1/18/02 | CJA 21 voucher certified for payment to Lantagne Legal Printing for Reply brief, Sup. jt. apx.. [01-4463] Different Than Amount Requested? (Y/N): N. [01-4463] (lrh) [01-4463] |
| 2/8/02 | Case calendared for oral argument. Scheduled Argument Date: 4/5/02. [01-4463, 01-4464, 01-4465] (jc) [01-4463 01-4464 01-4465] |
| 2/12/02 | ORDER FILED [3535038] granting attorney motion to sub aty [3535035-1] Added/appointed attorney(s) Bruce Bryan and terminated attorney Michael Joseph McCarthy for Carl J. Pasquantino in 01-4464 Is new aty fpd (Y/N)?: n Has A's Brief Been Filed (Y/N)?: Y. Copies to all counsel. [01-4464] (ldj) [01-4464] |

| DATE | PROCEEDINGS |
|---|---|
| 2/12/02 | Informal action taken mooting motion [3488403-1] in 01-4463, 01-4464, 01-4465 Copies to all counsel. [01-4463, 01-4464, 01-4465] (ldj) [01-4463 01-4464 01-4465] |
| 2/15/02 | CJA 21 voucher certified for payment to Lantagne Legal for brief and jt. apx. [01-4463] Different Than Amount Requested? (Y/N): N. [01-4463] (lrh) [01-4463] |
| 3/1/02 | CJA travel authorization issued to Isaac Joe in 01-4465. Internal accounting control number: [3545629-1] [01-4465, 01-4463] (elf) [01-4463 01-4465] |
| 3/21/02 | Supplemental authorities (FRAP 28(j)) filed by Appellant Carl J. Pasquantino in 01-4464, Appellant David B. Pasquantino in 01-4463, Appellant Arthur Hilts in 01-4465 [3557527-1] [01-4464, 01-4463, 01-4465] (ldj) [01-4463 01-4464 01-4465] |
| 4/5/02 | Oral argument heard. Jensen Egerton Barber for Appellant David B. Pasquantino in 01-4463, Isaac Joe for Appellant Arthur Hilts in 01-4465 Courtroom Deputy: JLC, Jr.. [01-4463, 01-4464, 01-4465] (jc) [01-4463 01-4464 01-4465] |
| 9/30/02 | Published, authored opinion filed. [01-4463, 01-4464, 01-4465] (ldj) [01-4463 01-4464 01-4465] |
| 9/30/02 | Judgment order filed. Decision: Reversed. Dissenting opinion filed. EOD Date: 9/30/02. [01-4463, 01-4464, 01-4465] (ldj) [01-4463 01-4464 01-4465] |



| DATE | PROCEEDINGS |
|---|---|
| 9/30/02 | CJA 20 voucher issued to Jensen Egerton Barber in 01-4463, Michael Joseph McCarthy in 01-4464, Isaac Joe in 01-4465. [01-4463, 01-4464, 01-4465] (ldj) [01-4463 01-4464 01-4465] |
| 10/8/02 | Motion filed by Appellee US in 01-4463, Appellee US in 01-4464, Appellee US in 01-4465 to extend time to file petition for rehearing until: pending a review by the Solicitor General. [3666673-1]. [01-4463, 01-4464, 01-4465] (ldj) [01-4463 01-4464 01-4465] |
| 10/15/02 | COURT ORDER filed [3670033] granting motion to extend time to file pet reh until 11/13/02 [3666673-1] in 01-4463, 01-4464, 01-4465 Copies to all counsel. [01-4463, 01-4464, 01-4465] (ldj) [01-4463 01-4464 01-4465] |
| 11/12/02 | Petition filed by Appellee US in 01-4463, Appellee US in 01-4464, Appellee US in 01-4465 for rehearing en banc. Number of copies filed: 20 [3686730-1] [01-4463, 01-4464, 01-4465] (ldj) [01-4463 01-4464 01-4465] |
| 11/14/02 | Federal Reporter Citation: 305 F.3d 291. [01-4463, 01-4464, 01-4465] (vsl) [01-4463 01-4464 01-4465] |
| 11/25/02 | Response/answer requested to motion for rehearing en banc [3686730-1] in 01-4463, motion for rehearing en banc [3686730-1] in 01-4464, motion for rehearing en banc [3686730-1] in 01-4465 [01-4463, 01-4464, 01-4465] (ldj) [01-4463 01-4464 01-4465] |

| DATE | PROCEEDINGS |
|---|---|
| 12/2/02 | Motion filed by Appellant David B. Pasquantino in 01-4463, Appellant Carl J. Pasquantino in 01-4464, Appellant Arthur Hilts in 01-4465 to extend time to file response to petition for rehearing en banc [3696973-1]. [01-4463, 01-4464, 01-4465] (ldj) [01-4463 01-4464 01-4465] |
| 12/5/02 | COURT ORDER filed [3698887] granting motion to extend time to file resp [3696973-1] Response/answer now due on 1/6/03 for David B. Pasquantino in 01-4463, for Carl J. Pasquantino in 01-4464, for Arthur Hilts in 01-4465 . in 01-4463, 01-4464, 01-4465 Copies to all counsel. [01-4463, 01-4464, 01-4465] (ldj) [01-4463 01-4464 01-4465] |
| 12/30/02 | Response/answer filed [3710779-1] by Appellant David B. Pasquantino in 01-4463, Appellant Carl J. Pasquantino in 01-4464, Appellant Arthur Hilts in 01-4465 to motion for rehearing en banc [3686730-1] in 01-4463, 01-4464, 01-4465 [01-4463, 01-4464, 01-4465] (mst) [01-4463 01-4464 01-4465] |
| 12/30/02 | Counsel of record form filed by William Beverly Poff in 01-4464, Frank Kenneth Friedman in 01-4464 for Appellant Carl J. Pasquantino in 01-4464. (ldj) [01-4464] |
| 1/14/03 | COURT ORDER filed [3718643] granting motion for rehearing en banc [3686730-1] in 01-4463, 01-4464, 01-4465 Copies to all counsel. [01-4463, 01-4464, 01-4465] (ldj) [01-4463 01-4464 01-4465] |



| DATE | PROCEEDINGS |
|---|---|
| 1/14/03 | Case reopened. [01-4463, 01-4464, 01-4465] (ldj) [01-4463 01-4464 01-4465] |
| 2/6/03 | Case calendared for oral argument.[01-4463, 01-4464, 01-4465] (jc) [01-4463 01-4464 01-4465] |
| 3/6/03 | CJA 21 Voucher received from Lantagne Legal Printing for add'l 20 copies of brief and add'l 20 copies of reply brief. [01-4463] (pgl) [01-4463] |
| 3/31/03 | CJA travel authorization issued to Isaac Joe in 01-4465. Internal accounting control number: [3762882-1] [01-4465, 01-4463] (dh) [01-4463 01-4465] |
| 4/1/03 | Supplemental authorities (FRAP 28(j)) filed by Appellant David B. Pasquantino in 01-4463, Appellant Carl J. Pasquantino in 01-4464, Appellant Arthur Hilts in 01-4465 [3763348-1] [01-4463, 01-4464, 01-4465] (ldj) [01-4463 01-4464 01-4465] |
| 4/2/03 | Oral argument heard en banc before WWW, HEW, JHW, PVN, KJW, MBM, WBT, RBK, RLG, DWS, CHH. Courtroom Deputy: LER/ SWV. Isaac Joe for Appellant Arthur Hilts in 01-4465 [01-4463, 01-4464, 01-4465] (ler) [01-4463 01-4464 01-4465] |
| 4/4/03 | Motion filed by Appellee US in 01-4463, Appellee US in 01-4464, Appellee US in 01-4465 for leave to file an attachment to the petition for rehearing en banc [3771749-1]. [01-4463, 01-4464, 01-4465] (ldj) [01-4463 01-4464 01-4465] |

| DATE | PROCEEDINGS |
|---|---|
| 4/16/03 | COURT ORDER filed [3771753] granting motion for leave to file an attachment to the petition for rehearing en banc. Judge Luttig did not participate in the en banc argument and Judge Motz was recused from the matter. [3771749-1] in 01-4463, 01-4464, 01-4465 Copies to all counsel. [01-4463, 01-4464, 01-4465] (ldj) [01-4463 01-4464 01-4465] |
| 6/24/03 | CJA 21 voucher certified for payment to Lantagne Legal Printing for en banc brief and reply brief. [01-4463] Different Than Amount Requested? (Y/N): N. . [01-4463] (pgl) [01-4463] |
| 7/18/03 | Published, authored opinion filed. [01-4463, 01-4464, 01-4465] (ldj) [01-4463 01-4464 01-4465] |
| 7/18/03 | Judgment order filed. Decision: affirmed. Dissenting opinion filed. EOD Date: 7/18/03. [01-4463, 01-4464, 01-4465] - [3824654] (ldj) [01-4463 01-4464 01-4465] |
| 8/11/03 | Mandate issued. [01-4463, 01-4464, 01-4465] - [3836275] (jh) [01-4463 01-4464 01-4465] |
| 8/12/03 | Record on appeal returned to USDC at Baltimore. Pleadings: Vols. 1-2 T/S: Vols. 3-11 SEALED: Vols. 12-13 No. of boxes: 1 [01-4463, 01-4464, 01-4465] - [3836920] (jh) [01-4463 01-4464 01-4465] |
| 8/26/03 | ORDER FILED [3844230] granting attorney motion to appoint Bruce Bryan as appellant's csl [3844134-1] . [01-4464] [3844230] (ldj) [01-4464] |



UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND (Baltimore)

[Filed: 04/13/00]

CASE # 00-CR-202-ALL

UNITED STATES OF AMERICA,
*Plaintiff,*

v.

DAVID B. PASQUANTINO, *et al* ,
*Defendant.*

**DOCKET ENTRIES**

| DATE | NO. | PROCEEDINGS |
|---|---|---|
| 4/13/00 | 1 | SEALED INDICTMENT as to Sealed Defendant #1 (1) count(s) 1-6, Sealed Defendant #2 (2) count (s) 1-6, Sealed Defendant #3 (3) count(s) 1-6, Sealed Defendant #4 (4) count(s) 1-6, Sealed Defendant #5 (5) count(s) 1-6, 7, Sealed Defendant #6 (6) count(s) 1-6, Sealed Defendant #7 (7) count(s) 1-6 (jl) [Entry date 04/14/00] |
| 4/13/00 | 2 | MOTION by USA to Seal indictment (c/s) (jl) [Entry date 04/14/00] |
| 4/13/00 | 2 | ORDER SEALING this indictment except that the Clerk shall furnish the U.S. Attorney with 7 certified copies of the indictment (Signed by Magistrate Judge Beth P. Gesner 4/13/00) (jl) [Entry date 04/20/00] |

| DATE | NO. | PROCEEDINGS |
|---|---|---|
| 5/3/00 | 3 | ORDER as to Sealed Defendant #1, for issuance of Bench warrant (Signed by Magistrate Judge Susan K. Gauvey 5/3/00) (jl) [Entry date 05/03/00] |
| 5/3/00 | 4 | ORDER as to Sealed Defendant #2, for issuance of Bench warrant (Signed by Magistrate Judge Susan K. Gauvey 5/3/00) (jl) [Entry date 05/03/00] |
| 5/3/00 | 5 | ORDER as to Sealed Defendant #3, for issuance of Bench warrant (Signed by Magistrate Judge Susan K. Gauvey 5/3/00) (jl) [Entry date 05/03/00] |
| 5/3/00 | 6 | ORDER as to Sealed Defendant #4, for issuance of Bench warrant (Signed by Magistrate Judge Susan K. Gauvey 5/3/00) (jl) (Entry date 05/03/00] |
| 5/3/00 | 7 | ORDER as to Sealed Defendant #5, for issuance of Bench warrant (Signed by Magistrate Judge Susan K. Gauvey 5/3/00) (jl) [Entry date 05/03/00] |
| 5/3/00 | 8 | ORDER as to Sealed Defendant #6, for issuance of Bench warrant (Signed by Magistrate Judge Susan K. Gauvey 5/3/00) (jl) [Entry date 05/03/00] |
| 5/3/00 | 9 | ORDER as to Sealed Defendant #7, for issuance of Bench warrant (Signed by Magistrate Judge Susan K. Gauvey 5/3/00) (jl) [Entry date 05/03/00] |
| 5/3/00 | 10 | Bench WARRANT issued as to Sealed Defendant #1 (jl) [Entry date 05/03/00] |



| DATE | NO. | PROCEEDINGS |
|---|---|---|
| 5/3/00 | 11 | Bench WARRANT issued as to Sealed Defendant #2 (jl) [Entry date 05/03/00] |
| 5/3/00 | 12 | Bench WARRANT issued as to Sealed Defendant #3 (jl) [Entry date 05/03/00] |
| 5/3/00 | 13 | Bench WARRANT issued as to Sealed Defendant #4 (jl) [Entry date 05/03/00] |
| 5/3/00 | 14 | Bench WARRANT issued as to Sealed Defendant #5 (jl) [Entry date 05/03/00] |
| 5/3/00 | 15 | Bench WARRANT issued as to Sealed Defendant #6 (jl) [Entry date 05/03/00] |
| 5/3/00 | 16 | Bench WARRANT issued as to Sealed Defendant #7 (jl) [Entry date 05/03/00] |
| 5/4/00 | 17 | Bench WARRANT Returned Executed as to David B. Pasquantino on 5/4/00 (jl) [Entry date 05/05/00] |
| 5/4/00 | — | Initial appearance as to David B. Pasquantino held before Magistrate Judge Susan K. Gauvey (ER: Davis) (Defendant informed of rights.) (jl) [Entry date 05/05/00] |
| 5/4/00 | 18 | ORDER Setting Conditions of Release as to David B.Pasquantino (Signed by Magistrate Judge Susan K.Gauvey 5/4/00) (c/d 5/4/00 sjd) (jl) [Entry date 05/05/00] |
| 5/4/00 | 19 | MOTION by USA as to David B. Pasquantino, Sealed Defendant #2, Sealed Defendant #3, Sealed Defendant #4, Sealed Defendant #5, Sealed Defendant #6, Sealed Defendant #7 to unseal indictment (jl) [Entry date 05/05/00] |

| DATE | NO. | PROCEEDINGS |
|---|---|---|
| 5/4/00 | 20 | ORDER DIRECTING indictment shall no longer be maintained under seal as to David B. Pasquantino, Sealed Defendant #2, Sealed Defendant #3, Sealed Defendant #4, Sealed Defendant #5, Sealed Defendant #6, Sealed Defendant #7 ( Signed by Magistrate Judge Susan K. Gauvey 5/4/00) (c/m 5/5/00 jl) (jl) [Entry date 05/05/00] |
| 5/8/00 | 21 | CJA 23 FINANCIAL AFFIDAVIT by David B. Pasquantino (eg) [Entry date 05/08/00] |
| 5/8/00 | 22 | ORDER DIRECTING defendant to pay $750.00 towards legal fees at this time subject to revision as to David B. Pasquantino (Signed by Magistrate Judge Susan K. Gauvey 5/8/00) (c/m 5/8/00 js) (eg) [Entry date 05/08/00] |
| 5/12/00 | 23 | CORRESPONDENCE by USA to Counsel for David B. Pasquantino re Discovery Agreement Conditions (ms) [Entry date 05/15/00] |
| 5/12/00 | — | Arraignment as to David B. Pasquantino, Not Guilty: count(s) 1-6 held before Magistrate Judge James K. Bredar (ER: S. Davis) (ms) [Entry date 05/15/00] |
| 5/12/00 | 24 | NOTICE of Appearance for David B. Pasquantino by Attorney Jensen Egerton Barber pursuant to CJA Act (ms) [Entry date 05/15/00] |



| DATE | NO. | PROCEEDINGS |
|---|---|---|
| 5/12/00 | 25 | ORDER REQUIRING Court appointed counsel as well as Government counsel to bring matter of defendant David B. Pasquantino's possible ability to contribute financially toward payment of counsel fees to the attention of the Judicial Officer at time of conviction or acquittal. (Signed by Magistrate Judge James K. Bredar 5/12/00) (c/d 5/12/00 sd) (ms) [Entry date 05/15/00] |
| 5/12/00 | — | Arraignment as to Carl J. Pasquantino, Not Guilty: Carl J. Pasquantino (2) count(s) 1-6 held before Magistrate Judge James K. Bredar (ER: S. Davis) (ms) [Entry date 05/15/00] |
| 5/12/00 | 26 | CJA 23 FINANCIAL AFFIDAVIT by Carl J. Pasquantino (ms) [Entry date 05/15/00] |
| 5/12/00 | 27 | NOTICE of Appearance for Carl J. Pasquantino by Attorney Michael J. McCarthy (ms) [Entry date 05/15/00] |
| 5/12/00 | 28 | ORDER REQUIRING CJA counsel as well as Government counsel to bring matter as to Defendant Carl J. Pasquantino's potential to contribute financially toward payment of counsel fees to attention of Judicial Officer at time of conviction or acquittal. (Signed by Magistrate Judge James K. Bredar 5/12/00) (c/d 5/12/00 sd) (ms) [Entry date 05/15/00] |
| 5/12/00 | — | Initial appearance as to Carl J. Pasquantino held before Magistrate Judge James K. Bredar (ER: S. Davis) (Defendant informed of rights.) (ms) [Entry date 05/15/00] |

| DATE | NO. | PROCEEDINGS |
|---|---|---|
| 5/12/00 | — | Initial appearance as to Francis A. Gillotti held before Magistrate Judge James K. Bredar (ER: S. Davis) (Defendant informed of rights.) (ms) [Entry date 05/15/00] |
| 5/12/00 | — | Arraignment as to Francis A. Gillotti, Not Guilty: Francis A. Gillotti (4) count(s) 1-6 held before Magistrate Judge James K. Bredar (ER: S. Davis) (ms) [Entry date 05/15/00] |
| 5/12/00 | 29 | CJA 23 FINANCIAL AFFIDAVIT by Francis A. Gillotti (ms) [Entry date 05/15/00] |
| 5/12/00 | 30 | NOTICE of Appearance for Francis A. Gillotti by Attorney David R. Solomon (ms) [Entry date 05/15/00] |
| 5/12/00 | 31 | ORDER REQUIRING CJA Counsel as well as Government counsel to bring to the attention of the judicial Officer the defendant Francis A. Gillotti's possible potential to contribute financially toward payment of his counsel fees at the time of conviction or acquittal. ( Signed by Magistrate Judge James K. Bredar 5/12/00) (c/d 5/12/00 sd) (ms) [Entry date 05/15/00] |
| 5/12/00 | — | Initial appearance as to Arthur Hilts held before Magistrate Judge James K. Bredar (ER: S. Davis) (Defendant informed of rights.) (ms) [Entry date 05/15/00] |
| 5/12/00 | — | Arraignment as to Arthur Hilts, Not Guilty: Arthur Hilts (7) count(s) 1-6 held before Magistrate judge James K. Bredar (ER: S. Davis) (ms) [Entry date 05/15/00] |



| DATE | NO. | PROCEEDINGS |
|---|---|---|
| 5/12/00 | 32 | CJA 23 FINANCIAL AFFIDAVIT by Arthur Hilts (ms) [Entry date 05/15/00] |
| 5/12/00 | 33 | ORDER REQUIRING CJA and Government Counsel to bring to Court's attention the possible potential of defendant Arthur Hilts to contribute financially toward the payment of his counsel fees at the time of conviction or acquittal. (Signed by Magistrate Judge James K. Bredar 5/12/00) (c/d 5/12/00 sd) (ms) [Entry date 05/15/00] |
| 5/12/00 | — | Initial appearance as to Gerard T. Ciccone held before Magistrate Judge James K. Bredar (ER: S. Davis) (Defendant informed of rights.) (ms) [Entry date 05/15/00] |
| 5/12/00 | — | Arraignment as to Gerard T. Ciccone, Not Guilty: Gerard T. Ciccone (5) count(s) 1-6, 7 held before Magistrate Judge James K. Bredar (ER: S. Davis) (ms) [Entry date 05/15/00] |
| 5/12/00 | 34 | CJA 23 FINANCIAL AFFIDAVIT by Gerard T. Ciccone (ms) [Entry date 05/15/00] |
| 5/12/00 | 35 | NOTICE of Appearance for Gerard T. Ciccone by Attorney Nancy Maggitti Cohen (ms) [Entry date 05/15/00] |
| 5/12/00 | 36 | ORDER REQUIRING CJA and Government Counsel to bring the fact that the defendant Gerard T. Ciccone may have sufficient resources to contribute financially toward the payment of his counsel fees to the attention of the Judicial Officer at the |

| DATE | NO. | PROCEEDINGS |
|---|---|---|
| | | time of conviction or acquittal. (Signed by Magistrate Judge James K. Bredar 5/12/00) (c/d 5/12/00 sd) (ms) [Entry date 05/15/00] |
| 5/12/00 | 37 | ORDER MODIFYING Conditions of Release previously imposed as to Gerard T. Ciccone in WDNY restricting defendant from visiting and/or entering, accessing OffTrack Betting Facilities. All other conditions of release ordered on May 4, 2000 in WDNY remain in full force and effect. (Signed by Magistrate Judge James K. Bredar 5/12/00) (c/m Pretrial 5/12/00 cw) (c/m 5/15/00 ms) (ms) [Entry date 05/15/00] |
| 5/12/00 | 38 | ORDER REQUIRING CJA and Government Counsel to bring the fact that defendant Cosmo D. Candido may have sufficient resources to contribute financially toward the payment of his counsel fees to the attention of the Judicial Officer at the time of conviction or acquittal. (Signed by Magistrate Judge James K. Bredar 5/12/00) (c/d 5/12/00 sd) (ms) [Entry date 05/15/00] |
| 5/12/00 | — | Initial appearance as to Cosmo D. Candido held before Magistrate Judge James K. Bredar (ER: S. Davis) (Defendant informed of rights.) (ms) [Entry date 05/15/00] |
| 5/12/00 | 39 | CJA 23 FINANCIAL AFFIDAVIT by Cosmo D. Candido (ms) [Entry date 05/15/00] |



| DATE | NO. | PROCEEDINGS |
|---|---|---|
| 5/12/00 | 40 | ORDER MODIFYING the Conditions of Release previously imposed in the WDNY as to Cosmo D. Candido. All other conditions of release remain in full force and effect. (Signed by Magistrate Judge James K. Bredar 5/12/00) (cm 5/12/00 Pretrial Services cw) (c/m 5/15/00 ms) (ms) [Entry date 05/15/00] |
| 5/16/00 | 41 | CJA 20 as to Carl J. Pasquantino Appointment of Attorney Michael J. McCarthy (c/m 5/15/00 dps) (jl) [Entry date 05/17/00] |
| 5/16/00 | 42 | CJA 20 as to Cosmo D. Candido Appointment of Attorney Dominic Fleming (c/m 5/15/00 dps) (jl) [Entry date 05/17/00] |
| 5/16/00 | 43 | CJA 20 as to Arthur Hilts Appointment of Attorney Isaac Joe (c/m 5/15/00 dps) (jl) [Entry date 05/17/00] |
| 5/16/00 | 44 | CJA 20 as to Gerard T. Ciccone Appointment of Attorney Nancy M. Cohen (c/m 5/15/00 dps) (jl) [Entry date 05/17/00] |
| 5/16/00 | 45 | CJA 20 as to Francis A. Gillotti Appointment of Attorney David Richard Soloman (c/m 5/15/00 dps) (jl) [Entry date 05/17/00] |
| 5/18/00 | 46 | JOINT MOTION by Cosmo D. Candido, USA for Psychological Exam (jl) [Entry date 05/18/00] |
| 5/18/00 | 47 | ORDER DIRECTING the defendant shall be examined as therein set forth as to Cosmo D. Candido (Signed by Magistrate Judge James K. Bredar 5/17/00) (c/m 5/18/00 cw) (jl) [Entry date 05/18/00] |

| DATE | NO. | PROCEEDINGS |
|---|---|---|
| 5/18/00 | 48 | Bench WARRANT Returned Executed as to Carl J. Pasquantino on 5/4/00 (jl) [Entry date 05/19/00] |
| 5/18/00 | 49 | Bench WARRANT Returned Executed as to Arthur Hilts on 5/4/00 (jl) [Entry date 05/19/00] |
| 5/18/00 | 50 | Bench WARRANT Returned Executed as to Francis A. Gillotti on 5/4/00 (jl) [Entry date 05/19/00] |
| 5/18/00 | 51 | Bench WARRANT Returned Executed as to Cosmo D. Candido on 5/4/00 (jl) [Entry date 05/19/00] |
| 519/00 | 52 | SEALED DOCUMENT (jl) [Entry date 05/19/00] |
| 5/23/00 | 53 | CJA 20 as to David B. Pasquantino: Appointment of Attorney Jensen Barber (c/m 5/22/00 dps) (jl) [Entry date 05/23/00] |
| 5/26/00 | 54 | MOTION by Carl J. Pasquantino to Extend Time to file pretrial motions (cag) [Entry date 05/30/00] |
| 5/30/00 | 55 | MOTION by Cosmo D. Candido to Extend Time to file Motions (cag) [Entry date 05/30/00] |
| 5/30/00 | 56 | ORDER as to Carl J. Pasquantino granting [54-1] motion to Extend Time to file pretrial motions as to Carl J. Pasquantino (2) (Signed by Chf Judge J. F. Motz 5/30/00 ) (c/m 5/30/00-cag) (cag) [Entry date 05/30/00] |



| DATE | NO. | PROCEEDINGS |
|---|---|---|
| 5/31/00 | 57 | Letter MOTION by Gerard T. Ciccone to Extend Time to file motions (jl) [Entry date 06/01/00] |
| 5/31/00 | 57 | ORDER granting [57-1] letter motion to Extend Time to file motions until 6/30/00 as to Gerard T. Ciccone (5) ( Signed by Chf Judge J. F. Motz 5/31/00) (c/m 6/1/00 jl) (jl) [Entry date 06/01/00] |
| 6/12/00 | 58 | SEALED DOCUMENT (jl) [Entry date 06/16/00] |
| 6/12/00 | 59 | SEALED DOCUMENT (jl) [Entry date 06/16/00] |
| 6/12/00 | 60 | SEALED DOCUMENT (jl) [Entry date 06/16/00] |
| 6/23/00 | 61 | MOTION by David B. Pasquantino to Modify Conditions of Release (c/s) (jl) [Entry date 06/23/00] |
| 7/26/00 | 62 | Letter MOTION by Gerard T. Ciccone to Extend Time for filing motions (jl) [Entry date 07/26/00] |
| 7/26/00 | 62 | ORDER granting [62-1) letter motion to Extend Time for filing motions until 8/15/00 as to Gerard T. Ciccone (5} Signed by Chf Judge J. F. Motz 7/26/00) (c/m 7/26/00 gs) (jl) [Entry date 07/26/00] |
| 7/26/00 | 63 | MOTION by Carl J. Pasquantino to Adopt and conform Motions and Request for hearing (c/s) (ji) [Entry date 07/27/00] [Edit date 07/27/00] |

| DATE | NO. | PROCEEDINGS |
|---|---|---|
| 7/26/00 | 64 | MOTION by Carl J. Pasquantino for pretrial determination of the admissability of tape recorded conversations and Request for hearing (c/s) (jl) [Entry date 07/27/00] |
| 7/26/00 | 65 | MOTION by Carl J. Pasquantino for disclosure of confidential informants or unnamed and unindicted co-conspirators (c/s) (jl) [Entry date 07/27/00] |
| 7/26/00 | 66 | MOTION by Carl J. Pasquantino for exculpatory evidence (c/s) (j1) [Entry date 07/27/00] |
| 7/26/00 | 67 | MOTION by Carl J. Pasquantino for Severance of defendants (c/s) (jl) [Entry date 07/27/00] |
| 7/26/00 | 68 | MOTION by Carl J. Pasquantino for notice of intent to use and description of 404(b) evidence and Request for hearing (c/s) (jl) [Entry date 07/27/00] |
| 7/26/00 | 69 | MOTION by David B. Pasquantino, Carl J. Pasquantino to Suppress evidence and Request for hearing (cis) (jl) [Entry date 07/27/00] |
| 7/28/00 | 70 | MOTION with Memorandum in Support by David B. Pasquantino, Carl J. Pasquantino to Dismiss indictment; and Request for hearing (c/s) (jl) [Entry date 07/28/00] |
| 7/28/00 | 71 | MOTION by David B. Pasquantino for Bill of Particulars (c/s) (ji) [Entry date 07/28/00] |
| 7/28/00 | 72 | MOTION by David B. Pasquantino to Adopt and conform Co-Defendants' motions (c/s) (jl) [Entry date 07/28/00] |



| DATE | NO. | PROCEEDINGS |
|---|---|---|
| 7/28/00 | 73 | MOTION by Arthur Hilts to Adopt all Motions by Co-Defendants (c/s) (jl) [Entry date 07/28/00] |
| [Illegible] | 74 | MOTION by Francis A. Gillotti to Join in motions filed by co-defendants, and for Leave to File Further Motions (c/s) (jl) [Entry date 08/07/00] |
| 8/10/00 | 75 | Bench WARRANT Returned Executed as to Gerard T. Ciccone on 5/8/00 (jl) [Entry date 08/10/00] |
| 8/14/00 | 76 | MOTION by Gerard T. Ciccone to Adopt Motion of Other Defendants, and for Leave to File Further Motions (c/s) (ji) [Entry date 08/14/00] |
| 8/31/00 | 77 | CONSOLIDATED RESPONSE by USA as to David B. Pasquantino, Carl J. Pasquantino, Terry Fraser, Francis A. Gillotti, Gerard T. Ciccone, Cosmo D. Candido, Arthur Hilts re Pretrial Motions and Attachments A-E (c/s) (jl) [Entry date 09/01/00] |
| 9/7/00 | 78 | REPLY by David B. Pasquantino, Carl J. Pasquantino to government's opposition to their [70-1] motion to Dismiss indictment (c/s) (jl) [Entry date 09/08/00] |
| 9/7/00 | — | Motion hearing held before Chief Judge J. Frederick Motz as to David B. Pasquantino, Carl J. Pasquantino, Terry Fraser, Francis A. Gillotti, Gerard T. Ciccone, Cosmo D. Candido, Arthur Hilts re: Pending Motions. (Court Reporter: Mary Zajac) (kam) [Entry date 09/08/00] |

| DATE | NO. | PROCEEDINGS |
|---|---|---|
| [Illegible] | — | Argument of Counsel made by David B. Pasquantino and Carl J. Pasquantino. (kam) [Entry date 09/08/00] |
| 9/7/00 | — | ORAL ORDER as to David B. Pasquantino, Carl J. Pasquantino, Terry Fraser, Francis A. Gillotti, Gerard T. Ciccone, Cosmo D. Candido, Arthur Hilts "DENYING" all Motions as stated in open Court. (Chf Judge J. F. Motz 9/7/00) (kam) [Entry date 09/08/00] |
| 9/7/00 | — | Minute entry as to David B. Pasquantino, Carl J. Pasquantino, Terry Fraser, Francis A. Gillotti, Gerard T. Ciccone, Cosmo D. Candido, Arthur Hilts: Trial date scheduled for Februrary 5, 2001; Status Report to the Court due by Friday, December 1, 2000. (kam) [Entry date 09/08/00] |
| 1/5/01 | 79 | MOTION by Gerard T. Ciccone to Modify Conditions of Release (jl) [Entry date 01/09/01] |
| 1/8/01 | 80 | ORDER MODIFYING conditions of release as to Gerard T. Ciccone ( Signed by Magistrate Judge James K. Bredar 1/5/01) (c/m 1/8/01 cw) (jl) [Entry date 01/09/01] |
| 2/2/01 | — | Rearraignment as to Francis A. Gillotti, Guilty: Francis A. Gillotti (4) count(s) 1 Terminated motions, Not Guilty: Francis A. Gillotti (4) count(s) 6 held before Chf Judge J. F. Motz (Court Reporter: Mary Zajac) (jl) [Entry date 02/05/01] |



| DATE | NO. | PROCEEDINGS |
|---|---|---|
| 2/2/01 | 81 | Exhibit list (Plea Agreement) by USA as to Francis A. Gillotti (jl) [Entry date 02/05/01] |
| 2/2/01 | 82 | Guideline Sentencing Order as to Francis A. Gillotti (Signed by Chf Judge J. F. Motz 2/2/01) (jl) [Entry date 02/05/01] |
| 2/5/01 | — | Jury trial - Day 1 - held before Chf Judge J. F. Motz as to David B. Pasquantino, Carl J. Pasquantino, Arthur Hilts. (Court Reporter: Mary Zajac) (kam) [Entry date 02/05/01] |
| 2/5/01 | — | Jurors Sworn and Examined on Voir Dire as to David B. Pasquantino (1) count(s) 1-6, Carl J. Pasquantino (2) count(s) 1-6, Arthur Hilts (7) count(s) 1-6 Terminated motions before Chf Judge J. F. Motz. (kam) [Entry date 02/05/01] |
| 2/5/01 | — | Jury impaneled as to David B. Pasquantino, Carl J. Pasquantino and Arthur Hilts. (kam) [Entry date 02/05/01] |
| 2/5/01 | — | Minute entry as to David B. Pasquantino, Carl J. Pasquantino, Arthur Hilts: Court's preliminary instructions to the Jury. (kam) [Entry date 02/06/01] |
| 2/5/01 | — | Minute entry as to David B. Pasquantino, Carl J. Pasquantino, Arthur Hilts: Case not concluded, to resume on Tuesday, February 6, 2001 @ 10:00 a.m. (kam) [Entry date 02/06/01] |

| DATE | NO. | PROCEEDINGS |
|---|---|---|
| 2/5/01 | — | Motion hearing held before Judge J. Frederick Motz as to Arthur Hilts, David B. Pasquantino, Carl J. Pasquantino re: Oral motion of Defendant, Arthur Hilts, for new counsel-argued- . Hearing continued in Chambers on the record. Oral Order (Motz, C. J.) "denying" defendant's motion/ request for appointment of new counsel. Oral order (Mott, C.J.) "denying" motion of Defendant, David Pasquantino, to Dismiss Indictment. (kam) [Entry date 02/06/01] |
| 2/5/01 | 83 | MOTION with Memorandum in Support by David B. Pasquantino, Carl J. Pasquantino to Dismiss indictment and Attachments A-I (c/s) (jl) [Entry date 02/07/01] |
| 2/5/01 | — | Rearraignment as to Gerard T. Ciccone, Guilty: Gerard T. Ciccone (5) count (s) 1, Not Guilty: Gerard T. Ciccone (5) count (s) 2-6, 7 held before Chf Judge J. F. Motz (Court Reporter: Mary Zajac) (jl) [Entry date 02/07/01] |
| 2/5/01 | 84 | Exhibit list (Plea Agreement) by USA as to Gerard T. Ciccone (jl) [Entry date 02/07/01] |
| 2/5/01 | 85 | Guideline Sentencing Order as to Gerard T. Ciccone (Signed by Chf Judge J. F. Motz 2/5/01) (c/m 2/6/01 kam) (jl) [Entry date 02/07/01] |
| 2/6/01 | — | Jury trial - Day 2 - held before Chf Judge J. F. Motz as to David B. Pasquantino, Carl J. Pasquantino and Arthur Hilts. (Court Reporter: Mary Zajac) (kam) [Entry date 02/06/01] |



| DATE | NO. | PROCEEDINGS |
|---|---|---|
| 2/6/01 | — | ORAL ORDER as to Arthur Hilts "DENYING" Motion for appointment of new counsel, for reasons stated in open Court. (Chf Judge J. F. Motz 2/6/01) (kam) [Entry date 02/06/01] |
| 2/6/01 | — | Jury sworn as to David B. Pasquantino, Carl J. Pasquantino and Arthur Hilts. (kam) [Entry date 02/06/01] |
| 2/6/01 | — | Opening Statements made by David B. Pasquantino, Carl J. Pasquantino and Arthur Hilts. (kam) [Entry date 02/06/01] |
| 2/6/01 | — | Minute entry as to David B. Pasquantino, Carl. J. Pasquantino, Arthur Hilts: Case not concluded, to resume on Wednesday, February 7, 2001 @ 9:30 a.m. (kam) [Entry date 02/06/01] |
| 2/7/01 | — | Jury trial - Day 3 - held before Chf Judge J. F. Motz as to David B. Pasquantino, Carl J. Pasquantino and Arthur Hilts. (Court Reporter: Mary Zajac) (kam) [Entry date 02/07/01] |
| 2/7/01 | — | Hearing out of the presence of the jury as to Arthur Hilts and Alternate Juror #2 held before Chf Judge J. F. Motz. (Court Reporter: Mary Zajac) (kam). [Entry date 02/07/01] |
| 2/7/01 | — | Minute entry as to David B. Pasquantino, Carl J. Pasquantino and Arthur Hilts: Juror #11 was excused from further consideration of the case. Alternate Juror #1 became Juror #11. (kam) [Entry date 02/07/01] |

| DATE | NO. | PROCEEDINGS |
|---|---|---|
| 2/8/01 | — | Jury trial - Day 4 - held before Chf Judge J. F. Motz as to David B. Pasquantino, Carl J. Pasquantino and Arthur Hilts. (Court Reporter: Mary Zajac) (kam) [Entry date 02/08/01] |
| 2/12/01 | — | Jury trial - Day 5 - held before Chf Judge J. F. Motz as to David B. Pasquantino, Carl J. Pasquantino and Arthur Hilts. (Court Reporter: Mary Zajac) (kam) [Entry date 02/12/01] |
| 2/12/01 | — | ORAL MOTION by David B. Pasquantino for Judgment of Acquittal made at the conclusion of the government's case-in-chief. (kam) [Entry date 02/12/01] |
| 2/12/01 | — | ORAL MOTION by Carl J. Pasquantino for Judgment of Acquittal made at the conclusion of the government's case-in-chief. (kam) [Entry date 02/12/01] |
| 2/12/01 | — | ORAL MOTION by Arthur Hilts for Judgment of Acquittal made at the conclusion of the government's case-in-chief. (kam) [Entry date 02/12/01] |
| 2/12/01 | — | Argument of Counsel made by David B. Pasquantino, Carl J. Pasquantino, Arthur Hilts and USA. (kam) [Entry date 02/12/01] |
| 2/12/01 | — | ORAL ORDER "DENYING" [0-0] oral motion for Judgment of Acquittal made at the conclusion of the government's case-in-chief as to Carl J. Pasquantino (2), "DENYING" (0-0) oral motion for Judgment of Acquittal made at the |



| DATE | NO. | PROCEEDINGS |
|---|---|---|
| | | conclusion of the government's case-in-chief as to David B. Pasquantino (1). (Chf Judge F. Motz 2/12/01) (kam) [Entry date 02/12/01] |
| 2/12/01 | — | ORAL ORDER as to Arthur Hilts granting in part, denying in part [0-0] oral motion for Judgment of Acquittal made at the conclusion of the government's case-in-chief as to Arthur Hilts (7) (Chf Judge J. F. Motz) (kam) [Entry date 02/12/01] |
| 2/12/01 | — | ORAL MOTION by David B. Pasquantino and Carl J. Pasquantino for Judgment of Acquittal made at the conclusion of all the evidence. (kam) [Entry date 02/12/01] |
| 2/12/01 | — | Argument of Counsel made by David B. Pasquantino, Carl J. Pasquantino and USA. (kam) [Entry date 02/12/01] |
| 2/12/01 | — | ORAL ORDER "DENYING" [0-0] oral motion for Judgment of Acquittal made at the conclusion of all the evidence as to David B. Pasquantino (1) and Carl J. Pasquantino (2). (Chf Judge J. F. Motz 2/12/01) (kam) [Entry date 02/12/01] |
| 2/12/01 | — | ORAL MOTION by Arthur Hilts for Judgment of Acquittal as to Count 1 made at the conclusion of all the evidence. (kam) [Entry date 02/12/01] |
| 2/12/01 | — | Argument of Counsel made by Arthur Hilts and USA. (kam) [Entry date 02/12/01] |

| DATE | NO. | PROCEEDINGS |
|---|---|---|
| 2/12/01 | — | ORAL ORDER "DENYING" [0-0] oral motion for Judgment of Acquittal as to Count 1 made at the conclusion of all the evidence as to Arthur Hilts (7). (Judge J. F. Motz 2/12/01) (kam) [Entry date 02/12/01] |
| 2/12/01 | — | Minute entry as to David B. Pasquantino, Carl J. Pasquantino, Arthur Hilts: Discussion of Jury Instructions. (kam) [Entry date 02/12/01] |
| 2/12/01 | — | Minute entry as to David B. Pasquantino, Carl J. Pasquantino and Arthur Hilts: Case not concluded, to resume on Tuesday, February 13, 2001 @ 10:00 a.m. (kam) [Entry date 02/12/01] |
| 2/12/01 | 86 | REQUESTED Jury instructions as to David B. Pasquantino (c/hd chambers) (jl) [Entry date 02/12/01] |
| 2/13/01 | — | Jury trial - Day 6 - held before Chf Judge J. F. Motz as to David B. Pasquantino, Carl J. Pasquantino and Arthur Hilts. (Court Reporter: Lisa K. Bankins) (kam) [Entry date 02/13/01] |
| 2/13/01 | — | Court's Charge to the Jury as to David B. Pasquantino, Carl J. Pasquantino and Arthur Hilts. (kam) [Entry date 02/13/01] |
| 2/13/01 | — | Closing Statements by counsel for David B. Pasquantino, Carl J. Pasquantino, Arthur Hilts and USA. (kam) [Entry date 02/13/01] |



| DATE | NO. | PROCEEDINGS |
|---|---|---|
| 2/13/01 | — | Bailiff CSO William Berttison Sworn as to David B. Pasquantino, Carl J. Pasquantino and Arthur Hilts. (kam) [Entry date 02/13/01] |
| 2/13/01 | — | VERDICT: David Pasquantino "GUILTY" as to Counts 1 -6; Carl Pasquantino "GUILTY" as to Counts 1 -6; Arthur Hilts "GUILTY" as to Count 1. (kam) [Entry date 02/13/01] |
| 2/13/01 | — | Minute entry as to David B. Pasquantino, Carl J. Pasquantino and Arthur Hilts: Jury polled at the request of the defendants. (kam) [Entry date 02/13/01] |
| 2/13/01 | 87 | Exhibit list by USA as to David B. Pasquantino (jl) [Entry date 02/14/01] |
| 2/13/01 | 88 | Exhibit list by David B. Pasquantino (jl) [Entry date 02/14/01] |
| 2/13/01 | 89 | Exhibit list by Carl J. Pasquantino (jl) [Entry date 02/14/01] |
| 2/13/01 | 90 | Certification - Exhibits to be submitted to jury (jl) [Entry date 02/14/01] |
| 2/13/01 | 91 | Stipulation regarding return of exhibits to the custody of and retained by counsel who offered them pending appeal (jl) [Entry date 02/14/01] |
| 2/14/01 | 92 | Guideline Sentencing Order as to Carl J. Pasquantino (Signed by Chf Judge J. F. Motz 2/13/01) (c/m 2/14/01 kam) (jl) [Entry date 02/14/01] |

| DATE | NO. | PROCEEDINGS |
|---|---|---|
| 2/14/01 | 93 | Guideline Sentencing Order as to David B. Pasquantino (Signed by Chf Judge J. F. Motz 2/13/01) (c/m 2/14/01 kam) (jl) [Entry date 02/14/01] |
| 2/14/01 | 94 | Guideline Sentencing Order as to Arthur Hilts (Signed by Chf Judge J. F. Motz 2/13/01) (c/m 2/14/01 kam) (jl) [Entry date 02/14/01] |
| 2/16/01 | 95 | Authorization for juror meal (signed by Felicia C. Cannon, Clerk 2/14/01) (jl) [Entry date 02/20/01] |
| 2/16/01 | — | ORAL MOTION by Arthur Hilts for Judgment of Acquittal as to Counts 2, 3, 4, 5 and 6 (jl) [Entry date 02/20/01] |
| 2/16/01 | 96 | ORDER as to Arthur Hilts granting [0-0] oral motion for Judgment of Acquittal as to Counts 2, 3, 4, 5 and 6 as to Arthur Hilts (7) (Signed by Chf Judge J. F. Motz) (c/m 2/20/01 jl) (jl) [Entry date 02/20/01] |
| 2/16/01 | — | DISMISSAL of Count(s) as to Arthur Hilts Terminated motions Counts Dismissed: Arthur Hilts (7) count (s) 2-6 (j1) [Entry date 02/20/01] |
| 2/20/01 | 97 | ORDER SETTING date for competency hearing as to Cosmo D. Candido (Signed by Magistrate Judge James K. Bredar 2/20/01) (c/m 2/20/01 cw) (jl) [Entry date 02/21/01] |



| DATE | NO. | PROCEEDINGS |
|---|---|---|
| 3/15/01 | 98 | ORDER DISMISSING the indictment as to Cosmo D. Candido (Signed by Chf Judge J. F. Motz 3/15/01) (c/m 3/15/01 j1) (MICROFILMED 3/16/01) (jl) [Entry date 03/16/01] |
| 3/15/01 | — | DISMISSAL of Count(s) as to Cosmo D. Candido Terminated motions terminating [55-1] motion to Extend Time to file Motions as to Cosmo D. Candido (6) Counts Dismissed: Cosmo D. Candido (6) count(s) 1-6 (j1) [Entry date 03/16/01] |
| 4/11/01 | — | Sentencing: Gerard T. Ciccone (5) count(s) 1 held before Chf Judge J. F. Motz.(Court Reporter: Mary Zajac) (kam) [Entry date 04/11/01] |
| 4/11/01 | 99 | JUDGMENT Gerard T. Ciccone (5) count(s) 1. IMPRISONMENT for a total term of 5 months; Supervised Release for a term of 2 years; Assessment $100.00, Gerard T. Ciccone (5) count(s) 2-6, 7 DISMISSED ( Signed by Chf Judge J. F. Motz 4/11/01 ) (c/m-cc/USM 4/12/01-jan) (MICROFILMED 4/12/01) (jb) (jan) [Entry date 04/12/01] |
| 4/11/01 | — | DISMISSAL of Count(s) as to Gerard T. Ciccone Terminated motions terminating [76-1] motion to Adopt Motion of Other Defendants as to Gerard T. Ciccone (5), terminating [76-2] motion for Leave to File Further Motions as to Gerard T. Ciccone (5) Counts Dismissed: Gerard T. Ciccone (5) count(s) 2-6, 7 (jan) [Entry date 04/12/01] |

| DATE | NO. | PROCEEDINGS |
|---|---|---|
| 4/24/01 | — | Sentencing Francis A. Gillotti (4) count(s) 1 held before Chf Judge J. F. Motz (Court Reporter: M. Zajac) (eg) [Entry date 04/24/01] [Edit date 04/30/01] |
| 4/24/01 | 100 | JUDGMENT Francis A. Gillotti (4) count(s) 1. Defendant placed on probation for a period of 2 years; and Special Assessment of $100.00, count (s) 2-5, 6 - Dismissed on the motion of the United States. (Signed by Chf Judge J. F. Motz 4/24/01) (c/m & microfilmed 4/24/01 eg) (eg) [Entry date 04/24/01) [Edit date 04/30/01] |
| 5/10/01 | 101 | LETTER/MOTION by Gerard T. Ciccone to Extend Surrender date (eg) [Entry date 05/10/01] |
| 5/10/01 | 101 | ORDER as to Gerard T. Ciccone granting [101-1] motion to Extend Surrender date as to Gerard T. Ciccone (5) (Signed by Chf Judge J. F. Motz 5/10/01) (c/m 5/10/01 gs) (cc' USMS 5/10/01 eg) (eg) [Entry date 05/10/01] |
| 5/14/01 | 102 | AMENDED JUDGMENT as to defendant Gerard T. Ciccone correct SSN and D/O/B: (Signed by CM Judge J. F. Motz 5/14/01) (c/m & microfilmed 5/14/01) (JB) (eg) [Entry date 05/14/01] |
| 5/23/01 | 103 | SENTENCING MEMORANDUM by Carl J. Pasquantino and attachments (c/s) (eg) [Entry date 05/23/01] |



| DATE | NO. | PROCEEDINGS |
|---|---|---|
| 5/30/01 | 104 | SENTENCING MEMORANDUM by Arthur Hilts and attachment (c/s) (eg) [Entry date 05/30/01] |
| 6/4/01 | 105 | RESPONSE by USA as to Carl J. Pasquantino Sentencing Memorandum (c/s) (eg) [Entry date 06/04/01] |
| 6/4/01 | 106 | RESPONSE by USA as to Arthur Hilts Sentencing Memorandum (c/s) (eg) [Entry date 06/04/01] |
| 6/6/01 | 107 | MOTION by David B. Pasquantino for Bond Pending Appeal and Exhibit 1 (c/s) (eg) [Entry date 06/06/01] |
| 6/6/01 | 108 | MOTION by David B. Pasquantino for Brady Information (c/s) (eg) [Entry date 06/06/01] |
| 6/6/01 | 109 | SENTENCING MEMORANDUM by David B. Pasquantino (cis) (eg) [Entry date 06/06/01] |
| 6/8/01 | 110 | RESPONSE by USA to David B. Pasquantino's Sentencing Memorandum and [108-1] motion of David B. Pasquantion for Brady Information, [107-1] motion of David B. Pasquantion for Bond Pending Appeal and attachments (c/s) (eg) [Entry date 06/08/01] |
| 6/8/01 | — | Sentencing: David B. Pasquantino (1) count(s) 1-6, Carl J. Pasquantino (2) count(s) 1-6, Arthur Hilts (7) count(s) 1 held before Chf Judge J. F. Motz. (Court Reporter: Mary Zajac) (kam) [Entry date 06/08/01] |

| DATE | NO. | PROCEEDINGS |
|---|---|---|
| 6/8/01 | 111 | Exhibit list by David B. Pasquantino (eg) [Entry date 06/12/01] |
| 6/8/01 | 112 | Exhibit list by Carl J. Pasquantino (eg) [Entry date 06/12/01] |
| 6/12/01 | 113 | JUDGMENT David B. Pasquantino (1) count(s) 1-6. Imprisonment 57 months 1-6 to run concurrently with each other; Supervised Release 3 years as to counts 1-6 to run concurrently with each other; Special Assessment $600.00 (Signed by Chf Judge J. F. Motz 6/12/01) (c/m & microfilmed 6/13/01) (JB) (eg) [Entry date 06/13/01] |
| 6/12/01 | 114 | JUDGMENT Carl J. Pasquantino (2) count(s) 1-6. Imprisonment 57 months as to counts 1-6 to run concurrently with each other. Supervised Release 3 years as to counts 1-6 to run concurrently with each other; Special Assessment $600.00 (Signed by Chf Judge J. F. Motz 6/13/01) (c/m 6/13/01) (microfilmed) 6/12 (eg) [Entry date 06/13/01] |
| 6/12/01 | 115 | NOTICE OF APPEAL by David B. Pasquantino (1) count(s) 1-6 FILING FEE $ (IFP-CJA) (Appeal rec'd on 6/8/01) (c/s) (ko) [Entry date 06/13/01] |
| 6/12/01 | 116 | NOTICE OF APPEAL by Carl J. Pasquantino (2) count(s) 1-6 FILING FEE $ (IFP-CJA) (Appeal rec'd 6/8/01) (c/s) (ko) [Entry date 06/13/01] |



| DATE | NO. | PROCEEDINGS |
|---|---|---|
| 6/13/01 | — | Notice of appeal and certified copy of docket as to David B. Pasquantino, Carl J. Pasquantino to USCA: [116-1) appeal, [115-1] appeal (c/s) (ko) [Entry date 06/13/01] |
| 6/13/01 | 117 | JUDGMENT Arthur Hilts (7) count (s) 1. Imprisonment 21 months. Supervised Release 2 years. Special Assessment $100.00 (Signed by Chf Judge J. F. Motz 6/13/01) (c/m & mircrofilmed 6/14/01) (eg) [Entry date 06/14/01] |
| 6/15/01 | 118 | NOTICE OF APPEAL by Arthur Hilts (7) count (s) 1 FILING FEE $ (IFP-CJA) (c/s) (ko) [Entry date 06/15/01] |
| 6/15/01 | — | Notice of appeal and certified copy of docket as to Arthur Hilts to USCA: [118-1) appeal (c/s) (ko) [Entry date 06/15/01] |
| 6/26/01 | — | USCA Case Number as to Arthur Hilts Re: [118-1] appeal USCA Number: 01-4465 (Case Manager: Lisa Jernigan) (ko) [Entry date 06/26/01] |
| 6/26/01 | — | USCA Case Number as to Carl J. Pasquantino Re: [116-1] appeal USCA Number: 01-4464 (Case Manager: Lisa Jernigan) (ko) [Entry date 06/26/01] |
| 6/26/01 | — | USCA Case Number as to David B. Pasquantino Re: [115-1] appeal USCA Number: 01-4463 (Case Manager: Lisa Jernigan) (ko) [Entry date 06/26/01] |

| DATE | NO. | PROCEEDINGS |
|---|---|---|
| 6/26/01 | 119 | ORDER of the USCA appointing Jensen E. Barber, II of Washington, DC as counsel pursuant to the provisions of the Criminal Justice Act to David B. Pasquantino (c/s) (ko) [Entry date 06/26/01] |
| 6/26/01 | 120 | ORDER of the USCA appointing Michael J. McCarthy of Bowie, MD as counsel pursuant to the provisions of the Criminal Justice Act to Carl J. Pasquantino (c/s) (ko) [Entry date 06/26/01] |
| 6/26/01 | 121 | ORDER of the USCA appointing Isaac Joe, Jr. of Baltimore, MD as counsel pursuant to provisions of the Criminal Justice Act to Arthur Hilts (c/s) (ko) [Entry date 06/26/01] |
| 6/26/01 | 122 | ORDER of the USCA consolidating USCA#01-4463, 01-4464 and 01-4465 for purposes of briefing and oral argument as to David B. Pasquantino, Carl J. Pasquantino, Arthur Hilts (c/s) (ko) [Entry date 06/26/01] |
| 7/18/01 | 123 | TRANSCRIPT of Motions Hearing filed as to David B. Pasquantino, Carl J. Pasquantino, Arthur Hilts for dates of 9/7/00 Re: [118-1] appeal, [116-1] appeal, [115-1] appeal (FILED SEPARATELY) (ko) [Entry date 07/18/01] |
| [Illegible] | 124 | TRANSCRIPT filed as to David B. Pas[illegible]uantino, Carl J. Pasquantino, Arthur Hilts for dates of 2/6/01 Re: [118-1] appeal, [116-1] appeal, [115-1] appeal (FILED SEPARATELY) (ko) [Entry date 07/18/01] |



| DATE | NO. | PROCEEDINGS |
|---|---|---|
| 7/18/01 | 125 | TRANSCRIPT filed as to David B. Pasquantino, Carl J. Pasquantino, Arthur Hilts for dates of 2/7/01 Re: [118-1] appeal, [116-1] appeal, [115-1] appeal (FILED SEPARATELY) (ko) [Entry date 07/18/01] |
| 7/18/01 | 126 | TRANSCRIPT filed as to David B. Pasquantino, Carl J. Pasquantino, Arthur Hilts for dates of 2/8/01 Re: [118-1] appeal, [116-1] appeal, [115-1] appeal (FILED SEPARATELY) (ko) [Entry date 07/18/01] |
| 7/18/01 | 127 | TRANSCRIPT filed as to David B. Pasquantino, Carl J. Pasquantino, Arthur Hilts for dates of 2/12/01 Re: [118-1] appeal, [116-1] appeal, [115-1] appeal (FILED SEPARATELY) (ko) [Entry date 07/18/01] |
| 7/18/01 | 128 | TRANSCRIPT of Sentencing filed as to Arthur Hilts for dates of 6/8/01 Re: [118-1] appeal (FILED SEPARATELY) (ko) [Entry date 07/18/01] |
| 7/18/01 | 129 | TRANSCRIPT of Sentencing filed as to David B. Pasquantino, Carl J. Pasquantino for dates of 6/8/01 Re: [116-1] appeal, appeal (FILED SEPARATELY) (ko) [Entry date 07/18/01] |
| 7/18/01 | — | Probation jurisdiction transferred out as to Francis A. Gillotti. Transmitted to Western District of New York Transfer of Jurisdiction form, with certified copies of indictment, judgment and docket sheet. (c/s) (rec'd 7/13/01) (eg) [Entry date 07/20/01] |

| DATE | NO. | PROCEEDINGS |
|---|---|---|
| 7/30/01 | 130 | TRANSCRIPT filed as to David B. Pasquantino, Carl J. Pasquantino, Arthur Hilts for dates of 2/13/01 Re: [118-1] appeal, [116-1] appeal, [115-1] appeal (Court Reporter: Lisa Bankins) (FILED SEPARATELY) (ko) [Entry date 08/01/01] |
| 8/8/01 | 131 | CERTIFICATE OF CLERK certifying record is complete for appeal purposes for [118-1] appeal, [116-1] appeal, [115-1] appeal as to David B. Pasquantino, Carl J. Pasquantino, Arthur Hilts (c/m) (ko) [Entry date 08/08/01] |



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
NORTHERN DIVISION

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CRIMINAL CASE NO. JFM-00-202

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UNITED STATES OF AMERICA,

v.

DAVID B. PASQUANTINO, CARL J. PASQUANTINO,
ARTHUR HILTS, FRANCIS A. GILLOTTI,
GERARD T. CICCONE, COSMO D. CANDIDO.

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Thursday, September 7, 2000
Baltimore, Maryland
(Motions Hearing)

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Before: HONORABLE J. FREDERICK MOTZ, *Chief Judge*.

* * * *

THE COURT: All right. Thank you. Who wants to go first?

MR. BARBER: Your Honor, I will humbly leap into the breach here. With respect to, I guess other than, as Mr. Welsh says, other than the boilerplate motions that we filed, we did file one to dismiss the indictment.

THE COURT: That seems to me to be the real motion. Isn't it?

MR. BARBER: Yes, sir.

THE COURT: All the other motions are denied.

MR. BARBER: Gee, that was easy. With respect to the Motion to Dismiss the indictment, Your Honor, we, and I apologize, to the Court as well as to Mr. Welsh for getting this up so late. We provided a response this morning. But I just got Mr. [4] Welsh's in my office on Tuesday. So we've been burning the midnight oil to respond to it.

Basically, what we have here is we have Circuits who have decided differently. We have a split between the First and the Second.

We have a, I think on our side of the table, we have the Supreme Court and the McNally case. We have a new case that came out of the trial court in New York called the Attorney General of Canada v. R. J. Reynolds Tobacco Company, which was decided sometime in July, I think, of this year, June the 30th of this year, which I cited in my response and which I can provide the Court a copy, which I'll give to the clerk. This is also voluminous.

But basically, it talks about the, and it is a civil case. But nevertheless, it ends up dismissing an indictment for a rather large racketeering RICO indictment sought by the attorney general of Canada, alleging that defendants established a smuggling scheme to avoid the payment of Canadian taxes. And in doing so, this Court in New York also found that the revenue rule, which we cited in our initial filing with the Court and again talked about it in our response to the government, that the revenue rule is alive and well, and ergo, having said that to the Court, is basically without jurisdiction to go forward with it, as such because there was not a cognizable injury to a business or a property. So they dismissed the indictment.

[5] We argue also in the posture that this Court should also dismiss the indictment.

The government relies strongly on the Trapilo case out of the Second Circuit, which suggests that you don't have to



reach the revenue rule in order to determine whether or not the wire fraud statute has been violated. And we're saying that our case is inapposite to the facts in the Trapilo case for a number of reasons. But mostly the facts in the Trapilo case were that liquor was purchased in the United States; it was then shipped to warehouses, which were stored on an Indian reservation.

Then from the warehouses, the liquor was then moved into Canada, it was smuggled into Canada, where Customs tax and Canadian excise taxes were avoided. And then the Canadian dollars that were earned were brought back into the United States and used in exchange for American dollars, and then used to buy more liquor, which then the scheme perpetuated itself.

The fact of the matter is the Court does not have before it any injury or, basically, any involvement in the United States, whether it's currency transactions. The men that are charged here, the Court would find out, that they bought the liquor that was purchased here in Maryland, was bought at retail or maybe a small wholesale. All Maryland state taxes were paid. There simply was not any—there was no tax law broken. There was simply not any cognizable injury to any person or business or enterprise or government entity in the United States, which makes [6] it different from the Trapilo case, which makes it different, the Trapilo case, we would argue, if the Court even looks at it, was wrongly decided because, in deciding it, it relies on four cases in its rationale. All four cases set forth some injury, some cognizable injury to persons, places, or entities within the United States.

The government relies on Brewer, which is a case in the Fourth Circuit, long time Fourth Circuit, and Florida. And we're talking about Florida tax laws that were involved there.

So I'm saying that this Court, in order to reach this case, would have to, because of the way this case is charged as a

wire fraud indictment and a wire fraud violation which talks about defrauding, would have to look as an essential element of the offense, who is being defrauded. And if there is no cognizable victim—I'm not talking about success of the scheme, I'm just talking about if there is no cognizable victim, then there is no crime, at which point then we're talking about whether or not we can go forward based on subject matter jurisdiction.

It seems to me that—

THE COURT: What are the elements of wire, of wire fraud?

MR. BARBER: The wire fraud is a scheme—whoever, having devised or tending to devise any scheme or artifice to defraud or obtaining money or property by means of false or [7] fraudulent pretenses, representations or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce any writings, signals, signs, pictures, or sounds for the purpose of executing such scheme or artifice. That's basically it.

What we're arguing—and that's what the McNally case in the Supreme Court said, even though the McNally case had to do with a mail fraud. And the cases that have followed that and the cases that have looked at the wire fraud essentially look and say, if we can't find it in the wire fraud statute history, we'll look to the mail fraud because those things are so similar.

But basically, the Supreme Court, in McNally, sets forth what it talks about fraud. And it talks about the statutory meaning of fraud and what "defraud" means and the intent of the Congress. And the fact of the matter is, it still gets us back.

If you cannot devise a scheme which defrauds some entity which is cognizable within the United States, then the wire



fraud statute, or in the case of McNally, the mail fraud statute does not apply.

And I wanted to assure the Court, we have these gentlemen here. I spoke with the barrister in Ontario, who was kind enough to provide me with a copy, and which I'll give Mr. Welsh, I'm sure he has a copy, a copy of the indictment which has been filed in Canada, in which these men, in fact all of the [8] defendants, have been charged for two breaches of Canadian criminal law. One is for the failure to file excise tax and one is for the possession of unlawfully imported spirits.

Therefore, its not that these crimes, if, in fact, the Court were to find that, that there is not a venue to try this case. And the appropriate venue is Canada. And they recognize that, and so they've indicted these people.

The Court basically has before it—we're talking about two, now three cases. We're talking about the Trapilo case out of the Second Circuit. We're talking about the Boots case out of the First Circuit. And we're talking about the new case which is out of the Second Circuit, but it's at the trial court level, having to do with the revenue rule, how it applies or doesn't apply.

The government wants you to obviously look to the Trapilo case. We're asking you to look at Boots and we're asking you to look at the new case. And we're also asking you to take notice of the fact that there is a proper venue, that these men were charged by indictment—well, by information, they call it in Canada, with crimes. So it's not that they could not be prosecuted.

And finally, that the Supreme Court in McNally was very clear about what fraud and defraud means in dismissing an indictment of mail fraud on the very same grounds. And that case is still good law. So therefore, we're either going to have

a [9] split in the circuits, which this case itself might end up before the Supreme Court.

But we would urge the Court, and we're not expecting a ruling today, but we would urge the Court, if at all troubled, then revert to the rule of lenity and find in favor of the defendants and dismiss the indictment.

THE COURT: All right. Mr. McCarthy.

MR. MCCARTHY Yes. Could I just add a couple of things here, Your Honor?

THE COURT: Sure.

MR. MCCARTHY: I represent, Michael McCarthy representing Carl Pasquantino. I think it's important to note, to add to Mr. Barber's comments that the recent decision in the Second Circuit, which is the Canadian government suing R. J. Reynolds, in which R. J. Reynolds is actually accused of setting up dummy corporations to help the smuggling scheme, it's a shocking allegation and could have far reaching effects for a lot of stockholders of R. J. Reynolds.

That was a civil RICO matter, Your Honor. I think it's important for us, what we're charged with in this case is six counts in our indictment, six counts of wire fraud. And there is a seventh count on an individual, Mr. Ciccone, with a weapon. The first two counts of the indictment charge, allege that David Pasquantino made arrangements, and then Counts Three through Six allege that my client, Carl Pasquantino, made arrangements with, [10] actually those are all allegations, with one liquor store in Mt. Airy, BJ's Liquor.

Now, I think it's important to look into the genesis of how this case got here which, when I was appointed in this case and I read the indictment, that was my initial reaction. How did this case get here? What did these gentlemen do that violated the laws of the jurisdiction?



I think what happened, at least in the counts against my client, is that somebody began an investigation down here of violation of the liquor laws and somebody put pressure on the liquor store operators. And I obviously am not privy to discussions. But discussions had to be held probably in this building in the U.S. Attorney's office, what can we charge these gentlemen with?

And I'm not at this point, Your Honor, alleging entrapment. That's an overused term in our legal system. But I think they tailored what crime was going to be charged and then they went on with the investigation. And they had body wires, consensual recordings of five conversations with my client, which is the basis for the wire fraud charged in this case. And they have a cooperating individual recording the phone conversations. And then my client is subsequently indicted for six counts of wire fraud.

And I think it's important to note this is not a conspiracy. There's no conspiracy charged in this indictment. [11] It's six separate and distinct counts of wire fraud.

And I think that in light of the Boots decision, which Trapilo tries to differentiate, but I think that, with the recent decision in the civil RICO case out of the Second Circuit, I just don't see how that this Court can be—the allegation is that the gentleman bought the liquor at a retail price. Now, the violations that were committed in this jurisdiction were committed by the liquor stores because they were retailers and they weren't supposed to sell in the volume that they were selling in. And obviously, if the case goes to trial and these individuals are brought up and testify, counsel will be provided with the appropriate material to cross examine, to see if they've pled to any crimes, etc., or what kind of deals they were granted. They had a very substantial stake because their liquor licenses were on the line.

But to try to enforce, now that we know positively that the gentleman have an indictment pending in Canada, I don't understand how this Court can be asked to enforce Canadian excise and duties in the State of Maryland when—

THE COURT: That's not what I'm being asked to do, is it? It is, and again, I will have to take another look at McNally. But the activity that occurred here was the formulation of the scheme to defraud somebody. Now, whether or not that fraud was successful might, could have been successful in the merits of the fraud, sort of make me look at Canadian Customs [12] law, which might be forbidden. It may or may not be. But assume for a moment it is.

But the locus of the activity—and it seems to me it's against the interest of this state to have people engaging in schemes to defraud other people, whether or not, you know, whether or not there is a cognizable victim within the meaning of the law. The activity then, frankly, for one thing, I mean, at a very practical level, that kind of activity breeds other kind of conduct which is not good, for example. And again it's not, only one person's charged with it, but it's carrying firearms and things of that nature. That kind of activity conducted in this state, which is the formulation of the scheme, itself has ancillary effects because it is essentially conduct which is of the sort to be corrupting.

MR. MCCARTHY: Your Honor, assuming, of course—

THE COURT: This is assuming it's all true. But that's, of course we're there.

MR. MCCARTHY: And that may be a point that the Court, I can understand the Court's reasoning. I don't agree with it. But if you have an indictment, the sovereign has an indictment across the border and they're the persons who have been defrauded.



THE COURT: But that's the point. These are not easy issues.

MR. MCCARTHY: No. No.

[13] THE COURT: In thinking about this—assume that the Canadian sovereign, it has its own problems. Let's assume that somebody avoided their excise laws and they can indict for that. What happened here, regardless of that, if just, it is corrupting and then it has ancillary effects here and it stems from, in a way, exactly what—that's why I asked what the elements of the crime are. It is the formulation of the scheme which itself is the corrupting, its corrosive aspects to Maryland. And, in fact, it does, you know, in a very tangible way, results in somebody driving a car with a firearm in it, or a truck with a firearm in it.

MR. MCCARTHY: Well, a vehicle.

THE COURT: A vehicle.

MR. MCCARTHY: But you know, Judge, that's something you can find right down here on the corner. I don't know what the estimate is. My wife keeps telling me, just keep your hands on the wheel and don't look at somebody when they cut you off because I don't know how many of those vehicles have weapons in them any more.

THE COURT: And if people have a felony conviction, they're going to end up right here and we're going to stop doing anything else. But that's another issue. Trying the felon in possession cases.

MR. MCCARTHY: That's right. That is the lawyer's relief act, Your Honor.

[14] THE COURT: Well, on the criminal side except for serious federal felonies, on the civil side we might as well forget intellectual property cases, employment discrimination and civil rights violations and other things that this Court

exists for. But that's a whole another issue which I won't get into now.

MR. MCCARTHY: I just hope that, I realize that the court just had the civil RICO matter dropped on the Court. I hope that the Court will be able to digest that fully before—we would not expect or want the Court to say, I'm going to take a 20 minute recess, and rule.

THE COURT: But it might be that simple. It might just be I've got to make the call because a civil RICO does—that's a whole different thing. It was cited. I have not read it. I won't pretend that I have.

But there the victim is the one, there is the harm to the victim. Here the harm is to the community, to this District. I mean that would be the theory. I don't know. I'll find out from Mr. Welsh.

That is what, as I just think about this, that is why it is something different than the harm to the Canadian government, is the fact, the very act of scheming. The word I guess, the adjective that is perhaps best, it's not, it may be corrupting somewhere, but it's corrosive, it is corrosive to this community, is it not? Assuming that it occurred.

[15] MR. MCCARTHY: I would say, Your Honor, you may have individuals that were so inclined, these individuals in these liquor stores. I can't say whether—I mean, it seems to be a method, they're in business to sell liquor and they violate it by selling wholesale volumes, assuming the allegations are correct, for argument, they're selling wholesale amounts in violation of the liquor laws.

I mean, it's questionable whether they were willing participants or whether they were out there actively engaged in trying to find people to move—

THE COURT: That's a whole different question.



MR. MCCARTHY: I understand that. Perhaps I'm practicing for trial if the motions are denied, because this is the type of thing that certainly would be fully exposed to a jury down here. And I can see some lights going on in those jurors' heads as I picture them there saying, what is this case doing here? But that's for another time.

I have nothing more on that motion even though the Court—

THE COURT: Okay. If you have something else to say, I will reconsider. Go ahead. If I rule.

* * * *

THE COURT: Mr. Welsh.

MR. WELSH: Yes. On the Motion to Dismiss the indictment, as the Court has inferred, it sets forth a substantial amount of conduct in Maryland. Specifically, there's the pick up of over 39,000 cases of liquor over an almost two [17] year period, on numerous, separate trips by people in all sorts of vehicles. A case of liquor is six 1.75 liter plastic bottles. So you've got six times 40,000 bottles of liquor that are involved in the case.

There's a substantial amount of contact back and forth with seven different liquor stores in this matter.

McNally doesn't, I believe, help Your Honor in the decision you have to make today. McNally refers, as I recall the McNally decision, has to do with whether a scheme to defraud can be of honest and faithful services—

THE COURT: I think it is the question of language in context, out of context taking on a new meaning, because it is the good and faithful services context, which then talks about the government, it has to have a property interest in that context. And of course, then you take that language and put it in another context, the revenues, and say that doesn't mean

that if the government, if a government has a revenue interest as opposed to a property interest.

But frankly, sometimes the development of the law is reasonable. To the extent that one tries to play word games, in my view it's not reasonable. But I' will take another look at McNally before I make my ruling.

MR. WELSH: I don't believe it's going to help Your Honor one way or the other.

The fact that there's an indictment in Canada isn't [18] anything new. This probably, a half of the offenses that we prosecute in this courthouse, there's another sovereign that has a right to prosecute, also, since so many of the things—

THE COURT: Aren't you, in effect, just helping Canada out in enforcing its smuggling laws? If it's got an interest, why shouldn't it assert it or why shouldn't it be brought as a smuggling case? Do we have a reciprocal statute as a policy matter? That's the ancillary holding in Boots, I guess.

MR. WELSH: There was so much activity on the American side of the border in this case because you have the, all of the logistics that go into obtaining this quantity of liquor. Then in the State of New York, you have the warehousing of it and the parceling of it out into smaller quantities for smuggling across the border.

THE COURT: Is there a smuggling statute that could have been applied?

MR. WELSH: I'm not aware of a U.S.—

THE COURT: It would have to be smuggling into Canada?

MR. WELSH: Right. I'm not aware of an export statute that would apply, which would be from our viewpoint. I think it would have to be what they were charged with in Canada. That's importing, how they charge it, is importing it without paying the tax.



So that's not unusual. Counsel says that Trapilo is wrongfully decided because the four cases that it relies on do [19] not involve a foreign government as a victim. Well, then we can say that the Boots case is wrongly decided because it didn't rely on any case in which a foreign government was the victim.

The truth of the matter is, there are only three cases that have to do with whether the foreign government can be a victim. And they're the three that have been cited, Boots, Trapilo and the Northern District of New York case that I cited that followed Trapilo. They're the ~~only three~~ reported cases that have to do with a scheme to defraud in which a foreign government is a victim. So they're the cases that will control Your Honor's view of this matter.

Frankly, the District Court case that follows Trapilo doesn't really add any additional rationale. So it's Boots and Trapilo.

Interestingly enough, the Trapilo case focuses on the elements of the offense being a scheme to defraud another of money or property, and that being the essence of the offense. And that is, in fact, there are three elements of the offense of wire fraud and mail fraud. The first element is the existence of a scheme to defraud another on your property.

The second is the knowing entry by a defendant into that, with the requisite intent.

And the third is the use of the mails or the wires, depending on which statute it is.

And so as the Trapilo decision clearly stated on Page [20] 552, the intent to defraud does not hinge on whether or not the appellees were successful in violating Canadian revenue law, as Section 1341 publishes this scheme, punishes this scheme, not its success. It cites the Helmsley Second Circuit case. Consequently, now on 553, there is no obligation to

pass on the validity of Canadian revenue law and the common law revenue rule is not commonly implicated. That clearly is the superior analysis in this case.

In the Southern District of New York case that was cited this morning, that is a civil RICO case in which the government of Canada is seeking money damages because of the scheme to do the same thing that's charged in this case; that is to violate the Canadian tax and import tax laws. That differs completely from criminal indictment because the purpose of the civil action is to receive money based upon Canadian laws. And that's why the District Court in New York, which is in the Second Circuit and bound by the Trapilo case, says, in their decision, that the essence of this is to have the government of Canada receive its Customs duties of which it was deprived, and therefore we have to rely on their revenue rule and the indictment runs afoul of the common law revenue rule.

In Trapilo and in Boots, it's clear that the indictments there did not require there to be any loss to the victim. The elements of the offense do not include that. We believe the Trapilo case is much better decided. And we ask the [21] Court to follow the Trapilo decision.

* * * *

THE COURT: Okay. Well, I'm going to ask what the defendants have asked me not to do because I really don't think this is something, I don't think my judgment's going to be a lot [23] better by spending hours and hours agonizing and writing this out than it is going to be after I simply, frankly, just take another look at McNally and read this RICO case.

It seems to me it's an issue on which there's a split in the circuits. I've read the circuit cases. I've thought about this. I'm going to give you my opinion in just a few minutes. Thank you.

(Recess.)



THE COURT: Well, I have reviewed the cases and they have confirmed my view that the indictment should not be dismissed. I had, of course, read the two Circuit cases directly on point before the Boots case and Trapilo case, and I thought that the Trapilo case was better reasoned. And frankly, the only insight I have to add to its analysis is what I have mentioned today during my colloquy with counsel and which I really think is an important policy matter which should be borne in mind in construing the statute and thinking about these matters.

This prosecution is not brought solely, if at all, to protect the excise revenues of Canada. As I've indicated, the focus of the mail fraud and wire fraud scheme is upon the scheme, as Trapilo points out, the formation of it, and then carrying out the scheme, whether or not it's going to be [24] successful, and that the very formulation of that scheme can have corrosive effects in the jurisdiction in which that scheme is formulated and steps a taken to carry it out. Because it is by nature or can be, you're engaging, essentially, in conduct that has a potentially corrosive effect and has been criminalized for that very reason. And that conduct was carried on in this state.

So I believe that Trapilo was analytically better decided, and as a matter of policy, that is the only insight I have to add to it, to its holding.

I have reviewed the civil RICO case to which I have been referred and it actually is now printed, published in 103 F.Sup.2d at 134. And again, I'm certainly not criticizing Mr. Barber for this. The part that I'm going to quote from is not in the papers he handed to me. As I say, it's not that—it wasn't Mr. Barber, Mr. McCarthy handed to me—that he was trying to hide something from me because we all knew it was there in the discussion. Maybe it's there but I missed it; that although, in the discussion of Trapilo, the civil case goes on to distinguish it precisely on the grounds we were discussing before, in that I guess the district judge there really ques-

tioned whether Trapilo had been rightly decided and perhaps implicitly continuing the revenue rule, although recognizing arguably, and the Court didn't reach the issue, but construing or being bound by Trapilo, the Court distinguished it on the very ground that it has been discussed this morning.

And that is that in terms, to the extent that what Canada was alleging was lost tax revenues, then inquiry into the fact of damage would require precisely the passing on the [25] validity of Canadian revenue laws and their applicability that the revenue rule forbids. The citation to this distinction appears at 103 F. Supp. 2d at 143. And that's precisely what we don't have to do here because, as Trapilo pointed out, you don't have to worry about whether or not the scheme would have been successful.

McNally, if anything, it seems to me is helpful to the government because it may refer to the property interest of the government. What it really focuses upon is money or property interest as opposed to good and faithful services. Here, whether or not it would been successful, clearly the scheme involved the money, not good and faithful services.

So this is certainly a legitimate motion. I certainly understand and I've considered. And the fact that I am ruling upon this orally does not mean that I don't take it seriously. But I do think that, frankly, it's an issue in which there is a clear conflict in the circuits. To me it ends up not being a difficult question at all because I think Trapilo is better reasoned, as I say, particularly when you focus upon what it is, why it is that this jurisdiction would have an interest in preventing, in criminalizing and then enforcing the criminal law against the concocting of the scheme because that itself has potentially corrosive effects.

* * * *

So the motions are denied. We can go off the record and just talk about scheduling for a moment.

(Conclusion of Proceedings.)



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
NORTHERN DIVISION

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CRIMINAL CASE NO. JFM-00-202

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UNITED STATES OF AMERICA,

v.

DAVID B. PASQUANTINO, CARL J. PASQUANTINO,
ARTHUR HILTS,

*Defendants.*

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VOLUME II OF V
Wednesday, February 7, 2001
Baltimore, Maryland

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Before: HONORABLE J. FREDERICK MOTZ, *Chief Judge* and a jury.

[Testimony of Francis Gillotti]

Q These were not the only occasions that you went into Canada?
A That's correct.
Q In fact, you went into Canada quite often, correct?
A That's correct.
Q But Canada is right next door to the town that you live in, correct?
A That's correct.
Q And Canada, across the border, has restaurants. You went to restaurants over there?
A Yes.
Q It had the casino. You went to casinos over there?
A There is a casino over there, yes.

Q You testified that you were involved with horses. And there are horse tracks over on the Canadian side of the border, correct?

A I was involved with moving a horse of Mr. Dave Pasquantino's at a farm, a horse farm in Canada.

Q And did you go into Canada to shop?

A Occasionally, but not that often.

Q But a number of people who lived in your town would go into Canada to shop, is that correct?

A Oh, correct.

Q And the reason for that is because of the exchange rate?

[134] A I believe so.

Q It was cheaper to buy food and clothes and go to restaurants and things like that in Canada than it was where you lived, correct?

A I'm assuming so, with certain things.

Q So its not an uncommon occurrence for residents of your town to go into Canada several times a day, is that correct?

A I would think not.

Q And in fact, you could actually walk across the border, correct?

A That's correct.

Q I have no further questions.

THE COURT: Anything further? Thank you, Mr. Gillotti. That's it? That's all. Thanks.

MR. WELSH: Next witness will be Gina Jonah.

OFFICER GINA JONAH,
GOVERNMENT WITNESS, SWORN

THE WITNESS: Yes, I do.

THE CLERK: Please be seated. Please speak directly into the microphone. State your full name for the record and spell your last name, please.



THE WITNESS: My name is Gina Marie Jonah. My last name is J-O-N-A-H.

THE CLERK: Thank you.

DIRECT EXAMINATION

BY MR. WELSH:

[135] Q How are you employed, Ms. Jonah?

A I am employed through Canada Customs, the Intelligence Division,

Q And what is your position called?

A I'm an intelligence officer.

Q How long have you been employed with Canada Customs?

A Seventeen years.

Q Are you familiar with the rules and regulations that pertain to the importation into Canada of alcoholic beverages?

A Yes, I am.

Q And would you describe for the Court and the jury what, if any, taxes or duties are due and owing on alcohol that is imported from the United States into Canada?

A Alcohol is taxed very high in Canada. There is an excise tax, that is a federal tax, that is applied, depending on the value of it, the U.S. purchase price. There is a general sales tax that is also a federal tax. There is a liquor Control Board of Ontario tax. And there also is a provincial sales tax.

Q Now, in this case, in preparation for your testimony, did you calculate the taxes that would be due and owing on a case of alcohol that was purchased in the United States for $56 American?

A Yes, I did.

Q All right. And would you give us the results of your calculation? What taxes would be due and owing if that same [136] case of alcohol were taken Into Canada?

A $157.

Q Now, is that American or Canadian?

A That is Canadian.

Q So that would be somewhat less than that in American, is that correct?

A Yes. That's correct.

Q Somewhere around $100?

A Correct. Yes.

Q Depending on the exchange rate at the moment, right?

A That's right. And the purchase price of the alcohol at the moment.

Q So is it fair to say roughly the amount of tax is twice the value of the case of liquor?

A Yes, it is.

Q Now, you were assigned to assist in the investigation of this matter and related investigation in Canada, is that correct?

A That's correct.

Q And would you describe for us what, if any, official actions you took with information systems pertaining to vehicles entering Canada?

A I issued lookouts for certain individuals that were suspected of smuggling alcohol into Canada. I also, we have a data base that enables us to track plates entering Canada. When [137] everyone enters Canada, a picture is taken of their license plate. And this data base is very helpful for us and assists us in the investigations.

Q And is the system that captures the information about the license plates on the vehicle entering referred to by the acronym of ICES?

A ICES works in a two part system with PALS. It's called the Primary Automated Lookout System. ICES is the system I enter the lookout into to tell the officers at a bridge who they send over for an examination,

Q Now, when you say send over for an examination, is there both a primary and a secondary area at the port?

A Yes, there is.



Q Would you briefly describe the functions of the Customs officers in those areas?

A The Primary Inspection Line we refer to as the PIL. That is where the officer asks you where you live, what is your citizenship, and goods that you have entering Canada. That officer will make a decision whether to refer you if there's a lookout on you, or if they feel they want to have the vehicle examined, they will send you over. And the vehicle will be examined in a secondary area by another inspector.

Q Now, do you have before you Government's Exhibit 37?

A Yes, I do. Yes, I do.

Q And just briefly tell us what Exhibit 37 is, please. [138] A 37 is a lookout that ! entered into one of our automated data bases, instructing the officers at the bridges to send a vehicle in for an examination.

Q Are the documents that are contained in Government's Exhibit 37 documents that are created and maintained in the ordinary course of business by the Canada Customs authorities?

A Yes, they are.

Q And specifically, were these documents created and maintained in response to your placing lookouts on certain vehicles?

A Yes.

Q Now, which vehicle does this exhibit relate to?

A This, the license plate, would you like?

Q Yes.

A NF2080.

Q And who is the registered owner of those—is that a New York or Ontario tag?

A I'm sorry. That's a New York tag, New York license plate.

Q And who is the registered owner of that tag?

A That tag is registered to Gina Pasquantino.

Q And would you just describe for us what is reported in Exhibit 37?

A You want the narrative that I've instructed the port officers?

Q Yes, please. Actually, I want what the port officers told [139] you happened.

A Okay. What happened is that this vehicle arrived—

MR. MCCARTHY: Objection, Your Honor.

THE COURT: Hearsay?

MR. MCCARTHY: Yes.

THE COURT: Overruled.

MR. WELSH: You may continue.

THE COURT: Government record.

THE WITNESS: This vehicle arrived in Canada and the primary officer asked all the questions and was instructing them like I instructed the lookout, and asked the vehicle to be pulled over for examination. The vehicle was directed into the secondary area and it took off. It just sped up the highway. I was paged immediately. And the officer completed a Port Runner Report, which is also attached here with a copy of her report of the questioning that took place when she interviewed the driver on the primary line.

BY MR. WELSH:

Q Was the driver ever identified by the port officer?

A No. The driver was not.

Q Now, did you have occasion to see this vehicle shortly after this event?

A Yes, I did.

Q When did you see the vehicle?

[140] A It was several days later, when it was found in Canada.

Q And where was it when you saw it?



A In Hamilton.

Q Court's indulgence, Your Honor. Like to next direct your attention to November the 25th of 1999. Did you have occasion to learn of another port run on the vehicle that you had placed a lookout upon?

A Yes, I did.

Q And do you have before you Government's Exhibit 38?

A Yes, I do.

Q And which vehicle, which tag number does this lookout and report relate to?

A W756LM, New York tag.

Q New York tag. And who is the registered owner of those tags?

A Francis Gillotti.

Q And would you describe what was reported as occurring on November the 25th of 1999?

A I had placed a lookout in the system on Francis Gillotti's vehicle, instructing the officers to pull it over and examine the vehicle. When he arrived, he was, the officer questioned him and referred him to the secondary examination area for an exam. And he left the area. He took off. He would not pull into the secondary area.

Q Now, if I can direct your attention on to December the 11th [141] of 1999. Did you have occasion to learn of yet another incident where a vehicle upon which you had placed a lookout ran the port?

A Yes, I did.

Q And do you have before you Government's Exhibit 21?

A Yes, I do.

Q And what tag number does that report relate to?

A V373WP, New York.

Q Who is the registered owner of those tags?

A The registered owner is David Pasquantino.

Q And would you describe what happened as reported on that date?

A A lookout was issued on this vehicle and the officers were instructed to examine the vehicle. And the vehicle was sent over. And again, the vehicle was, it ran the port. It took off.

Q Was any information obtained about who was operating that vehicle?

A Yes. An individual by the name of James Budwey was operating the vehicle at the time that it entered Canada.

Q And how was that determined?

A It was determined because as soon as the vehicle ran the port, the officer paged me immediately and he called U.S. customs and gave U.S. customs the information. And the individual spoke through the aid of a voice box. About two [142] hours later, U.S. customs called us and told us that they had the individual there but he was driving another vehicle when he entered the United States. So U.S. customs was able to provide us with information that he had in the vehicle at the time.

Q Now, I'd like to direct your attention to March the 31st of 2000. Did you have occasion to learn about a run of the port on that date?

A March the 31st.

Q Of 2000?

THE COURT: Do you have an exhibit number?

MR. WELSH: Yes. I need to get Pages 25 and 26 of Exhibit 19, please.

MR. MCCARTHY: Which pages again?

MR. WELSH: 25 and 26 of Exhibit 19.

THE WITNESS: Thank you.

BY MR. WELSH:

Q Do you recognize those documents, ma'am?



A Yes, I do.

Q And what are they?

A This is a copy of a Customs seizure receipt. When we seize goods and a vehicle at one of our bridges, a port of entry in Canada, we issue someone a customs seizure receipt when they pay to get their vehicle back.

Q Actually, this was not a run of the port but this was a recovery of evidence at the secondary location, is that correct?

[143] A Yes, it was.

Q All right. Would you describe what was reported happened on that occasion?

A I issued a lookout into our automated system and asked to have this subject pulled over to have his vehicle examined. And he pulled down into the secondary area and the officers found 24 bottles of alcohol hidden in the wheel well area of the vehicle.

Q Was the individual identified?

A Yes, he was.

Q And who was it?

A It was Cosmo Candido.

Q And the document that's before you is a report of that seizure, is that correct?

A Yes, it is.

Q At the time of the seizure, is the individual from whom the items were seized given any sort of paperwork?

A They're given a copy of this Customs seizure receipt.

Q And so Pages 25 and 26 there are something that would have been given to the driver at the time of the seizure?

A That's correct. He's paid the monies that were owed for his seized vehicle and he's free to leave there.

Q Now, do you have with you a number of printouts from the system relating to the information about various tag numbers coming across the border?

A Yes, I do.

[144] Q Why don't we start with the first exhibit number that you have in front of you? If you would just tell us which number that is?

A It is Exhibit 39.

Q All right. And what is the tag number for that vehicle?

A W442 Lima Kilo. K—

Q And who—

A New York.

Q And who is the registered owner of those tags?

A David Pasquantino. I believe that was on his van.

Q And would you just tell us approximately how many entries there are there.

A You want me to count each individual one?

Q Would you do that for us on this one?

THE COURT: I probably missed it. What's the time frame?

Q Going to get to that.

A I've counted 51.

Q All right. Would you give us the date of the first entry and the date of the last entry that's contained on the report?

MR. MCCARTHY: Exc4sed me. I missed that number.

THE COURT: 51.

THE WITNESS: 51. The. date of the first I have is 1998, December the 28th.

BY MR. WELSH:

[145] Q All right. And then the date of the last entry that's reported?

A April the 26th. 2000.

Q And at the top of the first page, does it indicate the period of time the records from which were searched? In other words, the time frame of the records that were searched.

A Yes. That's what indicates on the front, the time I was searching for, in that time frame.



Q And in this case, is that what's shown on the screen right now?

A Yes, it is.

Q And each of these reports have similar information that we're going to go over, is that correct?

A That's right.

Q There's a time range on the first page and then individual entries that were recorded, is that right?

A That's right.

Q Now, this information is being recorded in response to specific lookouts for tag numbers, is that right?

A This information is recorded on all vehicles that enter Canada. A picture is taken of the license plate at the time the officer is questioning them and it stays in our data bank.

Q So all vehicles that enter Canada, the tag numbers are recorded?

A That's correct.

[146] Q It doesn't necessarily tell you what vehicle the tag's on, is that correct?

A That's right.

Q All right. Would you tell us, go on to the next exhibit that you have before you. Tell us the exhibit number.

A The exhibit number is 41.

Q And the tag number for that vehicle?

A R672SE.

Q And who is the registered owner of those tags? A Cosmo Candido, his 1997 Intrepid, white.

Q And would you give us the, just the first and the last dates of the entries that were recorded?

A 1997, 07/09. 2000, 05/02.

Q Would you go on to the next exhibit, please?

A Exhibit Number 42.

Q The tag number for that?

A 12767AP.

Q And who is the registered owner of those tags?

A Carl Pasquantino's white pickup truck, Ford Ranger, I think it is.

Q And would you give us the dates of the first and last entry, please?

A The first date is 1998, 09/26. The last date is 2000, 05/03.

Q And would you go to the next one, please? [147] A Exhibit Number 43. The license plate is N[illegible]2080. It's registered to Gina Pasquantino. The first date is 1997, 03/29. And the last date is 1999, 07/16. Exhibit Number 44. W756LH, New York. That is Francis Gillotti's license plate. It's registered to him. First entry is 1998, 11/15. And the last is 1999, 11/25. Exhibit Number 45, BK678G. And that plate is James Budwey. First entry is 1999, 12/18. Last entry is 2000, 04/03. Exhibit Number 46, license plate V373WP. And that plate is registered to David Pasquantino. First entry is 1998, 07/25. 1999, 12/11 was last. Exhibit Number 47. V468 Whiskey Romeo, R. And this plate, I believe, is registered to—let me see. Gerald Ciccone. First entry is 1998, 08/01. Okay. Last entry is 2000, 05/01. Last one. Exhibit Number 48. 11782AP. That is registered to Hilts, Arthur Hilts. First entry 1998, 08/01. Last entry, 1999, 07/27.

Q And that completes all of the printouts that you have, correct?

A That's correct.

Q I want to return for just a moment to Exhibit 39, the second page.

A Okay.

Q And there is a column that's entitled Work Location. The [148] first entry there says Fort Erie Peace Bridge Traffic/BUS and 4104. Could you just explain to us in general what that entry means?

A Basically that is the Peace Bridge, when the person comes in at the Peace Bridge and a license plate, the picture is taken of the plate, that's what registers is Fort Erie Peace Bridge traffic and bus.



Q And within the first four entries, we have three different bridges, is that right? Both the Peace Bridge, the Queenston Bridge and the Rainbow Bridge, is that correct?

A That's correct.

Q I have no further questions.

MR. BARBER: Court's indulgence.

CROSS EXAMINATION

BY MR. MCCARTHY:

Q Good afternoon.

A Good afternoon.

Q Now, what is a, what's a Cam, a Cam pass?

A A CANPASS.

Q Cam, C-A-M. I'm sorry. Cam pass?

A Oh, we have a program called CANPASS in Canada. C-A-N-P-A-S-S. Is that what you're referring to?

Q Yes. I'm sorry.

A CANPASS is a privilege that we extend to certain people allowing them to enter Canada. Our organization conducts [149] several data base checks and has proven that you are a low risk traveler into Canada and you are given a CANPASS. And you are to cross at a certain location with that privilege.

Q Do you know if Carl Pasquantino had a CANPASS?

A I searched the system a few times and he did not. He might have obtained one at a later date. I'm not aware of that.

Q When was the last time you did a search for a CANPASS for Mr. Pasquantino, Carl?

A 19, 1999, January.

Q Court's indulgence.

A As I recall.

Q Nothing else.

THE COURT: Anybody else?

CROSS EXAMINATION

BY MR. JOE:

Q Yes, Your Honor. Just a few questions. Good afternoon, ma'am.

A Good afternoon.

Q My name is Isaac Joe and I represent Arthur Hilts. He's one of the individuals who you referred to as owning, one of the vehicles that crossed into Canada. I refer you specifically to Exhibit Number 48.

A Okay. I know it's here somewhere.

THE COURT: The last one. If that will help.

A Yes. It's right here. Yes.

[150] Q Now, you have indicated that the vehicle that this refers to, whose license plate number is 11782AP, was registered to Mr. Hilts, is that correct?

A Yes.

Q Now, it's true, isn't it, that all this document, that is Exhibit Number 48, reflects that that particular vehicle entered Canada on the day in question. That's correct, isn't it?

A The license plate entered Canada.

Q The license plate?

A Yes, that's correct.

Q And you have no way of knowing the purpose for the vehicle that contained the, on which the license plate was placed in the purpose of visiting Canada? You don't know anything about that, do you?

A No, I don't.

Q So you don't know whether or not the trips that are reflected on this particular exhibit were for recreational purposes or any other, any other kind of purposes?

A No, I do not.

Q Now, did you ever issue a lookout for this particular vehicle or the vehicle on which this license plate was placed?

A No, I did not.



Q Did you ever seize any vehicle, you or the Canadian authorities, seize any vehicle that Arthur Hilts had driven into Canada?

[151] A In Canada?

Q Yes. Into Canada?

A No.

Q And insofar as you are aware, no vehicle belonging to Arthur Hilts had been seized or was ever seized in Canada, is that correct?

A I cannot tell you that one was never seized. During the project that I was working on, one was not seized.

Q Thank you very much.

THE COURT: Do you want to ask another question? Go ahead.

MR. MCCARTHY: Yes.

CROSS EXAMINATION

BY MR. MCCARTHY:

Q May I approach?

THE COURT: Of course.

Q Ma'am, I want to show you what is marked as defendant Carl Pasquantino Exhibit Number One. Could you, could you identify that, please?

A Yes, I can. This is a renewal for a CANPASS designated commuter lane.

Q A renewal designated what?

A Designated commuter lane.

Q I see. And you wouldn't have a renewal form if you didn't previously have a CANPASS, would you?

[152] A No, that's right. That's correct.

Q And whose name is that in?

A This is in Carl Pasquantino's name.

Q And what's the date?

A The date is September the 30th.

Q Of?
A 2000.
Q And how long is a CANPASS usually good for?
A I don't, I don't know. I'm not sure. It could be nine months. I can't really say.
Q Could be a year? Two years?
A I don't think it's two years. I don't know. I don't work with the program, so I can't really say.
Q All right. That's an application for renewal of a CANPASS dated 9/30/2000 in the name of Carl Pasquantino, is that right?
A That's correct.
Q And is there a vehicle identified there?
A Yes, it is.
Q What's that?
A 12767AP.
Q And that's the same—
A It's a white pickup truck Ford Ranger.
Q Which is the same one that you listed on Government's Exhibit 42, which was the white truck, is that correct?
A That's right.
[153] Q And you say that those CANPASSes are issued to low risk travelers, is that right?
A That's correct.
Q Nothing else.

THE COURT: Mr. Barber?

CROSS EXAMINATION

BY MR. BARBER:

Q I think I may have my papers all messed up. Ma'am, if I could ask you to look at Government's Exhibit Number 39, which I think is your ICES
A Yes.
Q —run on Mr. Pasquantino. I'm going to put this up.



THE COURT: This is Mr. David Pasquantino.

Q Yes, ma'am—sir. Yes. This is the record that you identified as your ICES run on Mr. David Pasquantino.
A That's correct.
Q Okay. Now, in looking at all these columns on here, it tells you, let's see, goes, let's start from the work location. That big center column there?
A Yes.
Q The next one is the user ID. What does that mean, user ID?
A That is the name, that is the initials of the officer who was working the primary inspection line that spoke to the person that was in the vehicle.
Q Okay. And then I assume the next is the lane, which is [154] what lane of traffic the vehicle entered Canada?
A That is correct.
Q The next one says referral type.
A Yes, that's right.
Q Does that mean the type of inspection that one encounters when going over the border?
A That's correct.
Q In other words, so the one, two, three, four entry for Mr. David Pasquantino on February the 8th, 1999—
A Right.
Q —over the Rainbow Bridge shows that he was asked to go for a secondary inspection?
A That's right.
Q And in a secondary inspection, that's when you're asked to open up your trunks or your—
A Yes. You're asked to pull your vehicle over and the officer will search your vehicle.
Q And in looking at Number 39, Exhibit 39, was there any place that would suggest that Mr. Pasquantino, subject to a secondary inspection or otherwise, ever was found to have contraband?
A From looking at this?

Q Yeah.

A No. Not from looking at this.

Q Okay. But you can look at this and tell us, for example, [155] let's look at the last page here. I don't know what this, it says referral type and it gives an R. What does that mean?

A That means random. Do you want me to explain that?

Q I assume that just means it's your turn, right?

A No. Well, basically, the system is generated to every so many times a vehicle enters, it will instruct the officer to send it over for an exam on a random examination.

Q So in other words, when you say random, you mean the system generates the number of times?

A That's correct.

Q You wouldn't say, check this every 50 times?

A No, the system tells the officer when to do it.

Q So Mr. Pasquantino was also sent over on that page, it shows, another asks for a secondary. On that very same page.

A That s correct.

Q And the M just means?

A Mandatory.

Q Mandatory. Okay. Now, let's look at Number 43, Exhibit 43.

A Okay.

Q Which I believe you testified that vehicle or at least that license plate belonged to Gina Pasquantino.

A From my recollection, it did.

Q Okay. And just looking through that, you'll notice that there were a number of times that this car was selected for a [156] secondary?

A Well, I've gotten pages. I only have to send over twice for a secondary.

Q You may be right. And an R for random, there there's an occasional R?

A That's correct.



Q In other words, it was checked a couple of times?

A That's right.

Q And the other, which was Mr. David Pasquantino, which I do not know the exhibit number.

A That the pickup truck?

Q I don't know.

A 127. It's Exhibit Number 42?

MR. MCCARTHY: No, it was Carl. 42 was Carl. 39.

BY MR. BARBER:

Q No, Number 46.

A Okay.

Q I totally lost. Number 46?

A Yes.

Q In looking at that, that also, you testified that that belonged to Mr. David Pasquantino?

A The plate was registered to him, yes.

Q Okay. And that, that vehicle also entered into Canada a number of times and was at least sent over for a mandatory or a random search on a number of occasions?

[157] A That's correct.

Q And is there any document that you have or that your system would provide that could tell us what, if anything, was discovered as a result of these searches?

A No.

Q So in other words, you, from your system, you have no idea whether any time that Mr. Pasquantino drove over the border that he had alcohol?

A No.

Q Thank you.

THE COURT: Does anybody have any other questions?

MR. JOE: Your Honor, may I ask one other question?

THE COURT: Sure.

CROSS EXAMINATION

BY MR. JOE:

Q Referring your attention to Exhibit Number 48, which refers to the vehicle owned by Mr. Hilts. Can you identify the kind of vehicle that that plate was on?

A I don't recall at the moment, no. I don't.

Q Would it have been a '77 pickup truck?

A I don't know. Plates are transferrable. They go from one to another. I don't recall.

Q Do you have any information as to the kind of vehicle Mr. Hilts owned?

A The only thing—well, 117 I know was the license plate. [158] But at the moment, I can't recall what it was supposed to be attached to.

Q Thank you.

THE COURT: I don't want to confuse things. But I am a little confused. I would assume that you would have a data base that you could search to find out about seizures.

THE WITNESS: Yes, we do. I don't have any of that.

THE COURT: This is just that they re not here.

THE WITNESS: That's correct.

THE COURT: So that if any of those searches—and presumably you searched them?

THE WITNESS: That's right.

THE COURT: If any of those searches had resulted in seizures, your data base would show it.

THE WITNESS: That's right.

REDIRECT EXAMINATION

BY MR. WELSH:



Q I wanted to ask you a follow-up question about the CANPASS. You mentioned that that's for a designated commuter lane?

A That's correct.

Q Are the vehicles that go through the designated commuter lane treated the same as other vehicles in that the license plate numbers are photographed and recorded?

A That's right. Go ahead.

Q Is there a qualification to that answer?

[159] A No. They're the same, A photo is taken of them. The CANPASS program, however, checks are conducted on the individual. And if we have no previous enforcement, which means if we didn't do a seizure or if there was no criminal charges on the person that we have, we have to give them a CANPASS. There's people we suspect—

MR. MCCARTHY: Objection, Your Honor.

MR. WELSH: I don't think the witness needs to answer any farther.

THE COURT: All right. Okay,

MR. WELSH: So I have no further questions.

THE COURT: I'll strike what was just said.

MR. WELSH: That's all.

THE COURT: Anything further?

MR. WELSH: No, Your Honor.

THE COURT: Thank you very much. Any other people down from Canada you want to try to get on today?

MR. WELSH: I have the next witness who I'm ready to put on. I'm not sure that we would finish with her today. And they're all going back tomorrow, anyway.

THE COURT: We did get a little, today was not as productive as it could have been. But we're still moving at a good pace, I gather.

MR. WELSH: We are.

THE COURT: Why don't we stop? See everybody at 9:30.

[160] Have a nice evening.

(Conclusion of Proceedings.)



UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
NORTHERN DIVISION

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Criminal No. JFM-00-0202

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UNITED STATES OF AMERICA,

v.

DAVID PASQUANTINO, CARL PASQUANTINO, ARTHUR HILTS,
*Defendants.*

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Baltimore, Maryland
February 13, 2001
9:30 a.m.

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TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE J. FREDERICK MOTZ
UNITED STATES DISTRICT JUDGE, and a jury.

* * * *

[Judge Motz:]

Now I'm not going to read the indictment to you. You're going to have the indictment with you. Again, I remind you it's not evidence of any kind. But each count is what's called wire fraud. And in order to sustain a charge of wire fraud, the Government must prove each of the following elements beyond a reasonable doubt. First, that there was a scheme or artifice to defraud as the indictment alleges. Second, that each defendant or the defendant whose guilt or innocence you are considering knowingly and willfully participated in the scheme or artifice to defraud with knowledge of its fraudulent nature and with specific intent to defraud or that he

knowingly and intentionally aided and abetted others in this scheme. And third, that in the execution of the scheme, a defendant used or caused the use of interstate wires as specified in the indictment. They are the three elements.

Now the first element that the Government must prove beyond a reasonable doubt is that there was a scheme or artifice to defraud the governments of Canada and the province of Ontario of money. That's what the scheme alleged is. Now this first [22] element is almost self-explanatory. A scheme or artifice is merely a plan for the accomplishment of an object. A scheme to defraud is any plan, device or course of action to obtain money reasonably calculated to deceive persons of average prudence. Fraud is a general term which embraces all the various means by which human ingenuity can devise and which are resorted to by an individual to gain advantage over another by false representations, suggestions or suppressions of the truth or deliberate disregard for the truth. Thus, a scheme to defraud is merely a plan to deprive another of money by trick, deceit, deception or swindle. Now bear in mind that the trick under the law, the trick, deceit, deception or swindle must relate to a material matter and let me briefly describe material for you. A matter is material if a reasonable person would attach importance to its existence or nonexistence. The Government is not required to prove that the defendant himself originated the scheme to defraud. Furthermore, it is not necessary that the Government prove that the defendant actually realized any gain from the scheme or that the intended victim actually suffered any loss. A scheme to defraud need not be shown by direct [23] evidence, but may be established by all of the facts and circumstances in the case.

A couple of other things about the first element. The indictment charging the defendants allege a number of different components of the scheme to defraud. These components are set forth in paragraphs 3 to 11 of Count I. To sustain its



burden of proof, the Government is not required to prove all the components of the scheme to defraud that are alleged in the indictment. If the Government proves the scheme to defraud that contains some or all of the components in the indictment but is simply more narrow than the scheme to defraud as defined in the indictment, then the Government has carried its burden of proof as to the existence of a scheme to defraud.

Now as I told you before, in determining whether a particular defendant was a member of a scheme, each defendant is entitled to have the evidence against him considered individually including evidence of his knowledge or lack of knowledge, evidence of his participation in key conversations and evidence of participation in the activities in execution of the criminal plan. You may not convict a defendant of the offense unless [24] you are satisfied beyond a reasonable doubt that the defendant is a participant in the scheme which is charged in the indictment. The Government must show that the single overall scheme charged in Count I actually existed. The Government must prove beyond a reasonable doubt that the specific scheme charged is the actual scheme which the defendants knowingly and deliberately joined. Proof of separate or independent schemes is not sufficient. In determining whether or not any specific alleged scheme has been shown by the evidence, you must consider whether common, master or overall goals or objectives existed, which served as the focal point for the efforts and actions of any members of the agreement. In arriving at this decision, you may consider the length of time the alleged scheme existed, the mutual dependence or assistance between various persons alleged to have been its members and the complexity of the goals and objectives shown. A single scheme may involve various people at different levels and may involve numerous transactions conducted over a period of time and various places. A single scheme is one in which the defendants and those with whom they are charged with

share a common goal of the scheme as set forth in [25] the indictment. Separate or independent schemes although they may have common elements, common participants, common means, some common objectives or other common factors, but which lack the critical element of common objectives of the scheme on the part of all of the participants do not qualify as a single scheme. A person who has no knowledge of a scheme, but who happens to act in a way which advances some goal of the scheme does not thereby become a member of the scheme. Unless the Government proves beyond a reasonable doubt that the scheme alleged in the indictment actually existed and that the defendant knowingly and intentionally entered into that specific scheme, then you must find the defendant not guilty. Now that was the first element.

The second element that the Government must prove beyond a reasonable doubt is that a defendant participated in the scheme to defraud knowingly, willfully and with specific intent to defraud. Knowingly means to act voluntarily and deliberately rather than mistakenly or inadvertently. Willfully means to act knowingly and purposely with an intent to do something the law forbids. That is to say with bad purpose either to disobey or to disregard [26] the law. Intent to defraud means to act knowingly and with a specific intent to deceive for the purpose of causing some financial loss to another and specifically the other in this case is the government of Canada and the province of Ontario Now the question of whether a person acted knowingly, willfully and with intent to defraud is a question of fact for you to determine like any other fact question. This question involves one's state of mind. Direct proof of knowledge and fraudulent intent is almost never available. It would be a rare case indeed where it could be shown that a person wrote or stated that as of a given time in the past, he committed an act with fraudulent intent. Such direct proof is not required. The ultimate facts of knowledge and intent, those subjectives may be established by circumstantial evidence based upon a



person's outward manifestations, his words, his conduct, his acts and all the surrounding circumstances disclosed by the evidence and the rational or logical inferences that can be drawn from them. Circumstantial evidence if believed is of no less value than direct evidence as I told you before. In either case, the essential elements of the crime must be established beyond a [27] reasonable doubt. Since an essential element of the crime charged is intent to defraud, that follows a good faith on the part of a defendant as a complete defense to a charge of wire fraud. A defendant however has no burden to establish the defense of good faith. The burden is on the Government to prove fraudulent intent and the consequent lack of good faith beyond a reasonable doubt. As a practical matter then, in order to sustain the charges of wire fraud, the Government must establish beyond a reasonable doubt that each defendant knew that his conduct as a participant in the scheme was calculated to deceive and nonetheless, he associated himself with the alleged fraudulent scheme for the purpose of causing some loss to the government of Canada and the province of Ontario.

A defendant's knowledge is a matter of inference from the facts proved. In that connection, I instruct you that to be a member of a scheme, a defendant need not have known the identities of each and every other member nor need he have been apprised of all of their activities. Moreover, a defendant need not have been fully informed as to all of the details or the scope of the scheme in order to justify an inference of [28] knowledge on his part. The extent of a defendant's participation in a scheme has no bearing on the issue of a defendant's guilt. A person's liability is not measured by the extent or duration of his participation. Indeed each person may perform separate and distinct acts and may perform them at different times. Some participants may play major roles while others may play minor roles in the scheme. An equal role is not what the law requires.

Excuse me. I'm going to digress for a moment. You may not however infer that a defendant is guilty of participating in criminal conduct merely from the fact that he was present at the time the crime was being committed and had knowledge that it was being committed. Likewise, you may not infer that any defendant was guilty of participating in criminal conduct merely from the fact that he associated with other persons who were guilty of wrongdoing. Now I said I was digressing. I wasn't digressing. I was just turning to another instruction.

Now to conclude on the second element. If you find that a defendant was not a knowing participant in the scheme and lacked the specific intent to deceive, you should acquit that defendant. [29] On the other hand, if you find the defendant has established beyond a reasonable doubt not only the first element, namely, the existence of a scheme to defraud, but also the second element, the defendant was a knowing participant and acted with specific intent to defraud and if the Government also established the third element as to which I'm about to instruct you, then you have a sufficient basis upon which to convict.

And, counsel, actually, I don't think anybody gave me a specific instruction on the third element which is you either had to use an interstate wire across state lines or else cause somebody else to use it in the execution of the scheme. So I meant to mention this to you. Is there one there? Let me have it. It just didn't find its way into my papers. Thank you.

The third and final element that the Government must establish beyond a reasonable doubt is the use of an interstate or a wire communication in furtherance of the scheme to defraud. The wire communication must pass between two or more states. As, for example, a telephone call between New York and Baltimore. Excuse me. Not Baltimore. Maryland. The use of the wires need not itself be a [30] fraudulent representation. It must, however, further assist in carrying out the scheme to defraud. It is not necessary for the defendant to be



directly or personally involved in the wire communication as long as the communication was reasonably foreseeable in the execution of the alleged scheme to defraud in which the defendant is accused of participating. In this regard, it is sufficient to establish this element of the crime if the evidence establishes a finding that defendant caused the wires to be used by others. This does not mean the defendant must specifically have authorized others to make the call. When one doesn't act with knowledge that the use of the wires will follow in the ordinary course of business or where such use of the wires can reasonably be foreseen even though not actually intended, then he causes the wires to be used.

With respect to the use of the wires, the Government must establish beyond a reasonable doubt the particular use charged in the indictment. However, the Government does not have to prove that the wires were used on the exact date charged. It is sufficient if the evidence establishes beyond a reasonable doubt that the wires were used on the [31] dates substantially similar to the dates charged.

So that's the three elements and now I'm going to—I've mentioned the concept of aiding and abetting. So now let me give you an instruction on aiding and abetting.

* * * *

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
NORTHERN DIVISION

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CRIMINAL CASE NO. JFM-00-202

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UNITED STATES OF AMERICA,

v.

DAVID B. PASQUANTINO, CARL J. PASQUANTINO,
*Defendants.*

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Friday, June 8, 2001
Baltimore, Maryland
(Sentencing)

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Before: HONORABLE J. FREDERICK MOTZ, *Chief Judge*.

* * * *

[3] THE COURT: Okay. Who wants to be heard? How do we want to address this issue? Mr. Welsh, do you want to?

MR. WELSH: Yes. Your Honor, our basic position was set forth in our original letter following the jury verdict of February the 16th to the Court, in which we set forth our calculation of the loss in this matter. And what we did is we added up the number of cases of liquor from the liquor stores involved. We applied a factor of 90% because there was testimony during the trial that 90% of the liquor that was picked up in Maryland was taken to Canada. And then I rounded off the conversion of the amount.

THE COURT: Before you go, I just realized, I was scheduling something else. I'm going to tell them to get another time. Wait a second.



(Pause.)

THE COURT: Go ahead.

MR. WELSH: Your Honor, we totaled up the number of [4] cases. We took 90% based on the testimony that Your Honor heard. And then I rounded down to $100 American the amount of taxes per case that you also heard testimony about. It came out to $105 or so rounding it off.

So the total loss of all, relating to all the cases comes to $3,589,200.

It's the government's position, based upon the evidence that Your Honor heard, that these two defendants were the organizers of this criminal activity and that all of that loss should be attributed equally to the two of them because they were responsible for that loss and/or it was all reasonably foreseeable to them.

So that, in essence, is our position. And it's based upon the testimony presented at trial.

THE COURT: All right. Mr. Barber.

MR. BARBER: Yes, sir. First of all, I would like to object to one of the statements that Mr. Welch made, which was 90% of the liquor purchased from all these liquor stores went to Canada. We did hear, basically, from every liquor store owner that testified before the Court that they estimated that 90% of the sales that they made were sold to somebody who had participated in the scheme. But there was not, nobody said 90% went to Canada. I mean, that's an inference that one may draw. But nevertheless.

* * * *

THE COURT: Thank you. Mr. McCarthy?

MR. MCCARTHY: Yes, Your Honor. Just briefly, Your [9] Honor.

I did file a sentencing memorandum and the Court will note in there that I just objected to the government's calculation as to the loss. When I had initially written Ms. Hall back in March, I had said, and my client was accepting responsibility. And I had included the amounts that were attributable to Mr. Gillotti, but now I believe, that's why I did not address that issue in my sentencing memorandum.

But the most important point in my sentencing memorandum that was filed on May 23rd was, if there can be no loss amount for restitution because it's a foreign government, I do not understand how we can have a loss amount to determine a base offense level. And therefore my objection would be that there should not be, they can't prove any loss amount. That's my basic position.

But then my client has assumed responsibility. And I think the agents at some point had marked various bottles, that they subsequently came from Maryland, even though my client never directly dealt with any of those stores. And we have to remember here, we aren't dealing with a conspiracy. But my client would assume responsibility.

I believe we went back and doublechecked that and had the agent, actually took a recess and went and doublechecked it. And I believe the amount that she came up with was, of the cases that were marked, 96.5 were recovered in Canada. It was 96.5 [10] cases multiplied by the factor that the government chose to use, $105 per case. That would be $10,132.50.

And then going to the guidelines, 2F1.1, more than $10,000 would be an add three.

So I think if you take the base offense level of six and you add three, you would have a base offense level of nine. And then I would suggest that for my client, Carl Pasquantino, minus two for acceptance of responsibility, which will be a seven. And with him having no prior criminal record, I



believe that would leave a sentencing guideline range of zero to six. And that would be my position.

Now, in my sentencing memorandum, if the Court were to—I had mentioned Apprendi numerous times because we don't know exactly where Apprendi's going to end up. And it's my position that anything that increases the potential sentence should have been submitted to the jury and therefore any bump ups would be inappropriate for more than minimal planning or anything else.

However, in particular, if the Court were to accept the government's calculation, that would have an offense level, I believe, of, according to the Presentence Report, of 25, which would have, and 25 on the sentencing grid with no record would be 57 to 71 months.

Now, the maximum punishment for this offense is 60 months. And therefore, even under Apprendi, the loss amount would clearly go beyond the statutory maximum. And therefore, [11] that should have been submitted to the jury due to the fact that it wasn't—

THE COURT: You're not suggesting that I could sentence above 60 months?

MR. BARBER: Well, all I'm suggesting is the sentencing guideline range leaves an exposure. I understand the Court's question that the max is, the max is 60 months. But I'm just saying, because of the—

THE COURT: Actually, actually it's the max. But there are different counts. They can be consecutive. I withdraw that question.

MR. MCCARTHY: That is correct. And that, also, is an important reason why the first two counts of that indictment were allegedly made by David Pasquantino from a certain number in New York. Counts Three, Four, Five and Six were allegedly made from Carl Pasquantino from a place

unbeknownst to anybody. And that's why, when we made our motion for a judgment of acquittal, the government did some quick shuffling and said, well, there's circumstantial evidence. There is no circumstantial evidence that those calls were made from New York. And that's a very relevant factor.

But as the Court can see, if the Court buys the government's theory, you could go beyond the amount of the statutory maximum and, therefore, that should have been submitted to the jury. And it's our position that under [12] Apprendi, any of the potential increases should not be applied in this case.

* * * *



* * * *

[14] THE COURT: Thank you. Mr. Welsh?

MR. WELSH: Yes. Your Honor, Mr. Barber's correct that I mischaracterized the 90%. And I agree with him that the record before Your Honor is that 90% of the cases of liquor on those schedules went to the individuals involved in this case.

There was testimony from Quaranta and Gillotti and then there was circumstantial evidence that that liquor was going into Canada. So just to be sure—

THE COURT: Sure.

MR. WELSH:—that my position as to what the record [15] reflects is clear.

THE COURT: I take it even if some of it didn't make it to Canada, you've got essentially a million dollars or a hundred thousand, a hundred thousand cases.

MR. WELSH: Yes.

THE COURT: You're talking about.

MR. WELSH: That's correct.

THE COURT: What I mean by that is that the level 13 begins at two million five. And under your calculations, the amount of loss is three million five.

MR. WELSH: Three million nine.

THE COURT: Three million nine. So it's more than—

MR. WELSH: More than halfway up in that range.

THE COURT: I wouldn't be surprised if some of it stopped off, I think we had evidence at some point that some may have been going—there were allegations that Mr. Hilts, I think, I forget what it was.

MR. WELSH: Yes. That will come up with Mr. Hilts. But what it was, it was a statement.

THE COURT: By somebody else.

MR. WELSH: By some informant to a Niagara County detective that somebody named Butch was selling liquor.

* * * *

MR. WELSH:

* * * *

Counsel referred to the Third Circuit case which states correctly the law, that if you can't with some reasonable degree of certainty affix the loss to the victim, then you look at the gain or intended gain to the defendant. But the government suggests that that's not the case here. We know exactly how much per case is the loss to the Canadian government and the Province of Ontario. And we know with reasonable [18] certainty the number of cases that were involved.

As the Court points out, there's plenty of room on either side of our number of cases, that still isn't going to change the level at which the loss is currently under the guidelines.

* * * *

On the Apprendi issue, the government cites the 7th Circuit case, two cases from the 7th Circuit that say that sentencing guideline factors are not within the ambit of the rule in Apprendi. And that makes sense because sentencing guideline factors cannot affect the statutory maximum penalty. And that's what Apprendi teaches, is that the statutory maximum penalty, whatever factors affect that have to be submitted to the jury and proven beyond a reasonable doubt. So here it does not matter.

The fact that the sentencing range in this case [20] exceeds the statutory maximum for a one count really doesn't matter because there are multiple counts of conviction. And so the



sentencing range of 57 to 71 months is well within the total statutory maximum of the offenses of which the defendants have been convicted.

* * * *

MR. MCCARTHY:

[W]e think that the only liquor, when you try to figure loss, if you think it's appropriate for any increase over the six base offense level, but I still don't understand how you can't have a loss for [24] restitution purposes because it's a foreign government but you can for guideline purposes. Of course, that goes to the basic jur-isdictional issue of what are we doing here anyway? This Court gave that matter some serious thought. I think perhaps it will be revisited at a later time.

* * * *

MR. BARBER: Your Honor, if I may. I would just like to ask that we be allowed to join in the arguments made by co-counsel.

THE COURT: Of course.

MR. BARBER: Thank you.

MR. MCCARTHY: And likewise.

THE COURT: I am not going to perhaps address every one of the arguments because, frankly, I don't think there's anything close to anything that's cognizable under the sentencing guidelines. I mean, I will hold my tongue as to the quality of the positions of the defendant. But they, as far as [25] the loss is concerned, I am fully satisfied from the evidence produced at trial that the loss is above two and a half million dollars.

The government's calculations, essentially, are correct based upon the evidence at trial. Somewhat less than the number of cases attributed by the government to the scheme may have reached Canada. But as I indicated in colloquy with

counsel before, there would be a tremendous number of cases that didn't reach there and still be above two and a half million dollars, as far as the level 13 is concerned.

The jurisdictional issue is in the case. It's legitimately in the case. It's legitimately pursued. And I assume it will be visited on appeal. But sentencing is not the time to revisit that.

In terms of materials that have been presented to me today concerning the credibility of some of the witnesses, these witnesses were thoroughly cross examined at trial. There were things I find, frankly, to be cumulative. And it doesn't affect my assessment of what the amount of loss was one iota.

This is no acceptance of responsibility at all. Certainly, the jurisdictional issue could have been preserved and a stipulated guilty plea entered into. Letters by counsel after the verdict saying "we accept responsibility to some degree or whatever degree it may be" is not the kind of acceptance of responsibility contemplated by the guidelines to [26] result in a reduction.

I am not unsympathetic to, I'm going to refuse to call 58 an advanced age, but to the age and the health of defendants, particularly Carl Pasquantino. But unfortunately, fortunately or unfortunately, these are not matters for me to consider under the guidelines. I don't mean to give short shrift to this, but frankly, there simply is no basis under the guidelines for the adjustments or the departures requested.

MR. WELSH: Your Honor, to clarify. Is the Court saying that the matters are not extraordinary to the extent that the Kuhn opinion applies?

THE COURT: Of course, under Kuhn you can consider. I'm talking about the quality, not—they are not there in the extraordinary degree that I would exercise my discretion to entertain any of the departures.



It's just nothing there. I don't know of any simpler way to put it.

All right. So we have guideline ranges of 57 to 71, is that right? In terms of role in the offense, clearly the evidence establishes the leadership roles in the offense. And the fact that Carl Pasquantino may have, was found by a Social Security ALJ to have a disability simply doesn't affect his role in this offense.

57 to 71. What's the government's position? Let's see. What's the government's position within that range?

[27] MR. WELSH: Your Honor, we'll submit to the Court's discretion.

THE COURT: I'd be glad to hear from counsel, but I will tell you before hearing from counsel, I will say that I would intend to sentence at the low end of the range. Do you want to say anything further, Mr. McCarthy? Mr. Barber?

MR. MCCARTHY: No, Your Honor.

MR. BARBER: No, Your Honor.

THE COURT: Mr. David Pasquantino, before I impose sentence upon you, I'd be glad to hear anything you have to say. You don't have to saying anything at all. I certainly wouldn't hold that against you. If there's anything you want to say, I'd be glad to hear from you.

DEFENDANT DAVID PASQUANTINO: Yes. I want to thank this Court for any considerations. I want to thank my attorney and his staff. And I do accept responsibility for everything that I was involved in with this case and what I was aware of.

I give no excuses, just an explanation. Looking around the courtroom, I can see just about everyone is between the age of 50 to 60 years old, but I don't think anyone besides myself has a one year old and a two year old. Your Honor, please take these boys into consideration. Thank you.

THE COURT: Thank you. Mr. Pasquantino, Mr. Carl Pasquantino, before I impose sentence upon you, I'd be glad to hear anything you have to say. As I say, I wouldn't hold it [28] against you if you didn't say anything. But I'd be glad to hear from you. It's entirely up to you.

DEFENDANT CARL PASQUANTINO: Your Honor, first, I've got to say I'm not responsible for all that was presented. But I will take responsibility for the actions that have led me here. I will accept your decision. I only ask that you consider my background and let me be, remain an active part of society, productive member of society. Thank you.

THE COURT: Thank you, Mr. Pasquantino.

Well, the sentences are going to be the same so I'll announce them the same. I will sentence each of you to the custody of the Attorney General for a period of 57 months. I will impose as to each count the hundred dollar assessment required by law. I will impose no fine. As I have indicated in other cases, I do not believe that restitution, I think the government agrees, is appropriate in this case.

I will place each of you on supervised release for a period of three years as to each count, to run concurrently with one another, with the special conditions of probation being that you provide the probation officer with access to any requested financial information—excuse me. In Mr. David Pasquantino's case, that you satisfactorily participate in a program approved by the probation officer for gambling addiction.

There's something I missed here. Maybe this is a separate issue that, before I impose this, I'd better explore.



UNITED STATES DEPARTMENT OF JUSTICE

[SEAL]

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February 16, 2001

The Honorable J. Frederick Motz
Chief United States District Judge
101 W. Lombard Street
Baltimore, Maryland 21201

Re: United States v. David B. Pasquantino, Carl J. Pasquantino and Arthur Hilts, a/k/a/ Butch.
Criminal No. JFM-00-0202

GOVERNMENT'S STATEMENT OF FACTS
AND APPLICABLE SENTENCING FACTORS

1. STATEMENT OF FACTS

During the period starting in about March 1997 and continuing through May 2000, brothers DAVID B. PASQUANTINO and CARL J. PASQUANTINO devised a scheme to purchase wholesale quantities of liquor in Maryland, transport that liquor to New York State, store it there, then smuggle it into Canada without paying Canadian and Ontario Provincial excise duties and taxes. Working sometimes alone and sometimes together, they would order large quantities of selected liquors by telephone from several different Maryland retailers. A typical order might include 100 to 400 total cases of two or three different kinds of liquor. A case consists of six 1.75 liter plastic bottles. The

PASQUANTINO brothers would arrange for a driver and a vehicle to travel from the Niagara Falls, New York, area where they lived to Maryland to pick up the liquor and transport it back to Niagara Falls. The liquor was taken to storage areas which were also used to stage the subsequent smuggling of the liquor into Canada without declaring the liquor or paying the duties and taxes. FRANCIS A. GILLOTTI, GERARD T. CICCONE, and ARTHUR HILTS a/k/a BUTCH participated in the scheme by occasionally driving to Maryland and transporting the liquor to New York.

On the dates specified in Counts One and Two of the Indictment, on March 9, 1999, and June 5, 1999, DAVID B. PASQUANTINO placed interstate telephone calls from his home in Niagara Falls, New York, to Valley Wine and Spirits in-Hagerstown, Maryland, in furtherance of the scheme to defraud. On September 20, Septcmber 28, October 2, and October 16, 1999, as specified in Counts Three through Six of the Indictment respectively, CARL J. PASQUANTINO placed interstate telephone calls from his home in Niagara Falls, New York to BJ's Liquors in Mt. Airy, Maryland, in furtherance of the scheme to defraud.

Testimony at trial established that at least 90 percent of the following quantities of cases of liquor were involved in the scheme to defraud: BJ's Liquors—8747; Central City Liquors —5439; Button's Liquors—4046; JRJ Liquors—5047; Thurmont Liquors—4725; Valley Wine and Spirits—11128; and Chocolate Park Tavern—748. Testimony at trial also established that the Canadian customs duties and excise taxes on a typical case of liquor is approximately $100 American.

2. SENTENCING FACTORS—DAVID B. PASQUANTINO

As one of the two organizers of the smuggling operation, DAVID B. PASQUANTINO is responsible under the Sentencing Guidelines for all of the cases of liquor set forth above, a total of 39,880. Applying a factor of 90 percent



results in 35,892 cases. The loss for guideline purposes is thus $3,589,200.

Under U.S.S.G. §§ 2Fl.1 and 3B1.1, the base offense level of 6 is increased by 13 levels due to the amount of loss involved, by 2 levels for more than minimal planning, and by 4
levels for role in the offerse, resulting in an adjusted offense level of 25.

3. SENTENCING FACTORS—CARL J. PASQUANTINO

As one of the two organizers of the smuggling operation, CARL J. PASQUANTINO is responsible under the Sentencing Guidelines for all of the cases of liquor set forth above, a total of 39,880. Applying a factor of 90 percent results in 35,892 cases. The loss for guideline purposes is thus $3,589,200.

Under U.S.S.G. §§ 2F.1 and 3B1.1, the base offense level of 6 is increased by 13 levels due to the amount of loss involved, by 2 levels for more than minimal planning, and by 4 levels for role in the offense, resulting in an adjusted offense level of 25.

4. SENTENCING FACTORS—ARTHUR HILTS, A/K/A BUTCH

Testimony at trial established that ARTHUR HILTS, A/K/A BUTCH picked up liquor at Liquor Locker, JRJ Liquors, and at BJ's Liquors until April 28, 1999. The cases from Liquor Locker will not be considered. Adding the cases from JRJ Liquors with those from BJ's through April 28, 1999, totals 12,974 cases. Applying a factor of 90 percent results in 11,676 cases. The loss for guideline purposes is thus $1,167,600.

Under U.S.S.G. §§ 2F1.1 and 3B1.1, the base offense level of 6 is increased by 11 levels due to the amount of loss involved and by 2 levels for more than minimal planning,

resulting in an adjusted offense level of 19. Because of Mr. HILTS' minor role in the criminal activity, pursuant to U.S.S.G. §3B1.2 a 2 level reduction results in offense level 17.

5. RESTITUTION

Pursuant to case law already considered by the Court on the Motion to Dismiss, restitution is not appropriate in this case since the victim is a foreign government and the loss derives from tax laws of the foreign government.

Very truly yours,

Stephen M. Schenning
United States Attorney

By: /s/ Gregory Welsh
GREGORY WELSH
Assistant United States Attorney

cc: United States Probation Office
Jensen E. Barber, Esquire
Michael J. McCarthy, Esquire
Isaac Joe, Jr., Esquire
SA Michael Murray, ATF



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

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Criminal No. JFM-00-0202

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UNITED STATES OF AMERICA,

v.

ARTHUR W. HILTS, JR.

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SENTENCING MEMORANDUM

ARTHUR W. HILTS, Jr. by his attorney Isaac Joe, Jr., submits the within memorandum for consideration with respect to sentencing scheduled for June 8, 2001.

*Introduction*

The Court is aware of the underlying facts in this case. Mr. Hilts was a driver in the alleged "scheme". He admittedly traveled to Maryland from Niagara Falls, NY over an extended period to pick up certain kinds of liquor which he, in turn, took back to NY. The government concedes that he ceased making such pick-ups in or about April 29, 1999. There was no evidence adduced at trial that any of the liquor he transported to NY was ultimately taken into Canada.

Sentencing Factors

*Loss*

As the Court is aware, the government urges that the amount of loss attributable to this defendant is 11,676 cases of liquor. There was *no evidence* adduced at trial, however, that *any* of the cases of liquor that this defendant transported to New York were ultimately transported into Canada.[1] In fact,

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[1] As the Court is further aware, the only evidence of actual loss to Canada adduced at trial were the 419 bottles of liquor that had been

an ATF report indicated that they (AFT) was advised on 4/30/99 (the day after the government concedes Hilts ceased participating in the alleged "scheme"), that Hilts was "bringing illegal alcohol into the Niagara Falls area and *selling it to local retail dealers and clubs*." (See attached page of Government Exh. 20, #22). Thus, there is no basis upon which this Court can ascribe any loss to the Canadian government to *this* defendant.

Moreover, defendant is aware of Application Note 9 to Sec. 2F1.1, which states that "the loss need not be demonstrated with precision" and only "a reasonable estimate" is required "given the available information". In applying this directive, however, courts have cautioned that the loss calculation should "bear some *reasonable* relation to the *actual harm*".[2] See, e.g., *U.S. v. Krenning*, 93 F. 3d 1257, 1269 (5th Cir., 1996), *U.S. v. Melton*, 131 F. 3d 1400, 1406 (10th Cir., 1997), *U.S. v. Kopp*, 951 F. 2d 521 (3rd Cir., 1991). And, because there is no evidence that any of the liquor transported by this defendant was ultimately taken into

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"marked" in Maryland and later recovered in Canada. However, *none* of said recovered bottles were transported to New York from Maryland by Hilts; the evidence was that those bottles had been obtained from a liquor store other than the ones Hilts picked up liquor from. Hence, there is no evidence of loss to the Canadian government that can be attributed to Hilts.

[2] In *U.S. v. Haddock*, 12 f.3d 950, 960-64 (10th Cir., 1993), the Court held that an alternative method of calculating loss where "actual loss" is difficult to estimate, it is proper under Note 9 to use "the offender's gross gain". Herein, however, there is no evidence before this Court as to what, if any, "gain" might have inured to this defendant. Thus, it is inappropriate to use this method. See also, *U.S. v. Parrish*, 84 F.3d 816, 819 (6th Cir., 1996) (after first ascertaining that there was a loss, affirming use of gain for fraud defendant); *U.S. v. Haas*, 171 F.3d 259, 269-70 (5th Cir., 1999) (noting that some other circuits require some actual loss, but "according to our precedent, if the loss is either incalculable or zero, the district court must determine the Sec. 2F1.1 sentence enhancement by estimating the gain to the defendant as a result of his fraud").



Canada, there is no evidence of "actual harm" to Canada that resulted from him activities.

*Jurisdiction*

This defendant reiterates the argument, previously advanced, that this Court lacks jurisdiction to impose punishment for crimes allegedly committed against the government of Canada.

Respectfully submitted,

/s/ Isaac Joe, Jr.
ISAAC JOE, JR.
Attorney-at-Law
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(410) 889-8870
Attorney for Arthur W. Hilts, Jr.

# United States District Court

District of Maryland

Case Number: JFM-00-0202

UNITED STATES OF AMERICA

v.

DAVID PASQUANTINO

## JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed on or After November 1, 1987)

Defendant's Attorney: JENSEN E. BARBER, ESQ.

Assistant U.S. Attorney: GREGORY WELSH

THE DEFENDANT:

☐ pleaded guilty to count(s) ____

☐ pleaded nolo contendere to count(s) ____ which was accepted by the court.

☒ was found guilty on counts 1-6 after a plea of not guilty.

| Title & Section | Nature of Offense | Date Offense Concluded | Count Numbers |
|---|---|---|---|
| 18:1343 & 2 | WIRE FRAUD; AIDING & ABETTING | 3/9/99 | 1 |

The defendant is adjudged guilty and sentenced as provided in pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.



☐ The defendant has been found not guilty on count(s), ____

☐ Count(s) ____ (is)(are) dismissed on the motion of the United States.

IT IS FURTHER ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Defendant's SSN: 081-40-7134
Defendant's Date of Birth: 1-29-47
Defendant's U.S.M. No.: 34157-037

JUNE 8, 2001
Date of Imposition of Judgment

Defendant's Residence Address:
7015 SUNNYDALE DRIVE
NIAGRA FALLS, NY 14304

/s/ J. Frederick Motz June 12, 2001
J. Frederick Motz, Chief
United States District Judge

Defendant's Mailing Address:
SAME AS ABOVE

Name of Court Reporter: MARY ZAJAC

DEFENDANT: DAVID PASQUANTINO

CASE NUMBER: JFM-00-0202

ADDITIONAL COUNTS OF CONVICTION

| Title & Section | Nature of Offense | Date Offense Concluded | Count Number(s) |
|---|---|---|---|
| 18:1343 & 2 | WIRE FRAUD; AIDING & ABETTING | 6/5/99 | 2 |
| " | WIRE FRAUD; AIDING & ABETTING | 9/20/99 | 3 |
| " | WIRE FRAUD; AIDING & ABETTING | 9/28/99 | 4 |
| " | WIRE FRAUD; AIDING & ABETTING | 10/2/99 | 5 |
| " | WIRE FRAUD; AIDING & ABETTING | 10/16/99 | 6 |



DEFENDANT: DAVID PASQUANTINO

CASE NUMBER: JFM-00-0202

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of 57 months as to counts 1-6 to run concurrently with each other.

☐ The court makes the following recommendations to the Bureau of Prisons:

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at ____ a.m./p.m. on ____

☐ as notified by the United States Marshal.

☒ The defendant shall surrender, at his/her own expense, to the institution designated by the Bureau of Prisons at the date and time specified in a written notice to be sent to the defendant by the United States Marshal. If the defendant does not receive such a written notice, defendant shall surrender to the United States Marshal:

☒ within 30 days after the effective date of the mandate.

A defendant who fails to report either to the designated institution or to the United States Marshal as directed shall be subject to the penalties of Title 18 U.S.C. § 3146. If convicted of an offense while on release, the defendant shall be subject to the penalties set forth in 18 U.S.C. § 3147. For violation of a condition of release, the defendant shall be subject to the sanctions set forth in Title 18 U.S.C. § 3148. Any bond or

property posted may be forfeited and judgment entered against the defendant and the surety in the full amount of the bond.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____ at _____, with a certified copy of this judgment.

_____

United States Marshal

By: _____

Deputy U.S. Marshal

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 3 years as to counts 1-6 to run concurrently with each other.

The defendant shall comply with all of the following conditions:

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

STATUTORY CONDITIONS OF SUPERVISED RELEASE

The defendant shall not commit any federal, state or local crime.

In any felony case, the defendant shall not possess a firearm as defined in 18 U.S.C. § 921.

The defendant shall not illegally use or possess a controlled substance.



The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer.

☐ The above drug testing condition is suspended based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)

If this judgment imposes any criminal monetary penalty, including special assessment, fine, or restitution, it shall be a condition of supervised release that the defendant pay any such monetary penalty that remains unpaid at the commencement of the term of supervised release in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment. The defendant shall notify the court of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay restitution, fines, or special assessments.

STANDARD CONDITIONS OF SUPERVISION

1) The defendant shall not leave the judicial district without the permission of the court or probation officer;
2) The defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4) The defendant shall support his or her dependents and meet other family responsibilities;
5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;

6) The defendant shall notify the probation officer ten days prior to any change in residence or employment;

7) The defendant shall refrain from excessive use of alcohol;

8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;

9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any persons convicted of a felony unless granted permission to do so by the probation officer;

10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;

11) The defendant shall notify the probation officer within 72 hours of being arrested or questioned by a law enforcement officer;

12) The defendant shall notify the probation officer within 72 hours of being charged with any offense, including a traffic offense;

13) The defendant shall not enter into any agreement to act as an informer or special agent of a law enforcement agency without the permission of the court;

14) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendants's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.



## CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth on Sheet 5, Part B.

| | Assessment | Fine | Restitution |
|---|---|---|---|
| Totals: | $ 600.00 ($100.00 as to each count) | $ | $ |

☐ If applicable, restitution amount ordered pursuant to plea agreement. . . . . $

## FINE

The defendant shall pay interest on any fine of more than $2,500, unless the fine is paid in full before the 15th day after the date of judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 5, Part B may be subject to penalties for default and delinquency pursuant to 18 U.S.C. § 3612(g).

☒ The court has determined that the defendant does not have the ability to pay a fine; therefore, a fine is waived.

☐ The court has determined that the defendant does not have the ability to pay interest and it is ordered that:

- ☐ The interest requirement is waived.
- ☐ The interest requirement is modified as follows:

## RESTITUTION

☐ The determination of restitution is deferred until _____. An Amended Judgment in a Criminal Case will be entered after such determination.

☐ The defendant shall make restitution to the following payees in the amounts listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless specified otherwise in the priority order or percentage payment column below.

| Name of Payee | Amount of Restitution Ordered | Priority Order or Percentage of Payment |
|---|---|---|

SCHEDULE OF PAYMENTS

Payments shall be applied in the following order: (1) assessment; (2) restitution; (3) fine principal; (4) cost of prosecution; (5) interest; and (6) penalties.

Payment of the total fine and other criminal monetary penalties shall be due as follows:

A ☒ In full immediately; or

B ☐ $____ immediately, balance due (in accordance with C, D, or E); or

C ☐ Not later than_____; or

D ☐ Installments to commence_____ day(s) after the date of this judgment.

E ☐ In____ (*e.g. equal weekly, monthly, quarterly*) installments of $____ over a period of _____ year(s) to commence when the defendant is placed on supervised release.

The defendant will receive credit for all payments previously made toward any criminal monetary penalties imposed.

Unless the court expressly orders otherwise, if this judgment imposes a period of imprisonment, payment of criminal monetary penalties shall be due during the period of imprisonment through the Bureau of Prisons' Inmate Financial Responsibility Program.



If the entire amount of criminal monetary penalties is not paid prior to the commencement of supervision, the balance shall be paid:

☐ in equal monthly installments during the term of supervision; or

☐ on a nominal payment schedule of $_____ per month during the term of supervision.

The U.S. Probation officer may recommend a modification of the payment schedule depending on the defendant's financial circumstances.

Special instructions regarding the payment of criminal monetary penalties:

☐ Joint and Several with:

☐ The defendant shall pay the following costs of prosecution and/or court costs:

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

STATEMENT OF REASONS

☒ The court adopts the factual findings and guideline application in the presentence report.

OR

☐ The court adopts the factual findings and guideline application in the presentence report except (see attachment, if necessary):

Guideline Range Determined by the Court (before departures):

Total Offense Level: 25
Criminal History Category: 1
Imprisonment Range: 57 to 71 Months
Supervised Release Range: 2 to 3 Years

Fine Range: $ 10,000.00 to $ 1,500,000.00

☒ Fine waived or below the guideline range because of inability to pay.

Total Amount of Restitution: $0.00

Restitution is not ordered (or only partial restitution is ordered) because:

*For all offenses regardless of when committed*:

☒ Consideration of restitution not mandated by statute and not appropriate under facts of the case

☐ No identifiable victim has suffered physical injury or pecuniary loss

☐ Other (see attachment, if necessary)

*For offenses committed prior to April 24, 1996*:

☐ Financial circumstances of the defendant

☐ Disproportionate complication/prolongation of the sentencing process

*For offenses against property committed on or after April 24, 1996*:

☐ Excessively large number of identifiable victims

☐ Disproportionate complication/prolongation of the sentencing process

*For offenses committed on or after April 24, 1996 other than crimes of violence or offenses against property or relating to tampering with consumer products*:

☐ Financial circumstances of the defendant

☒ The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by the application of the guidelines.

OR



☐ The sentence is within the guideline range, that range exceeds 24 months, and the sentence is imposed for the following reason(s):

☐ The sentence departs from the guideline range:

☐ upon motion of the government, as a result of defendant's substantial assistance.

☐ for the following specific reason(s):

# United States District Court

District of Maryland

Case Number: JFM-00-0202

UNITED STATES OF AMERICA

v.

CARL PASQUANTINO

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed on or After November 1, 1987)

Defendant's Attorney: MICHAEL J. MCCARTHY, ESQ.
Assistant U.S. Attorney: GREGORY WELSH

THE DEFENDANT:

☐ pleaded guilty to count(s) ____

☐ pleaded nolo contendere to count(s) ____ which was accepted by the court.

☒ was found guilty on counts 1-6 after a plea of not guilty.

| Title & Section | Nature of Offense | Date Offense Concluded | Count Numbers |
|---|---|---|---|
| 18:1343 & 2 | WIRE FRAUD; AIDING & ABETTING | 3/9/99 | 1 |

The defendant is adjudged guilty and sentenced as provided in pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.



☐ The defendant has been found not guilty on count(s)_____

☐ Count(s) ____ (is)(are) dismissed on the motion of the United States.

IT IS FURTHER ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Defendant's SSN: 058-34-9179
Defendant's Date of Birth: 12/22/42
Defendant's U.S.M. No.: N/A

JUNE 8, 2001
Date of Imposition of Judgment

Defendant's Residence Address:
7526 ST. JOSEPH ROAD
NIAGRA FALLS, NY 14304

/s/ J. Frederick Motz June 12, 2001
J. Frederick Motz, Chief
United States District Judge

Defendant's Mailing Address:
SAME AS ABOVE

Name of Court Reporter: MARY ZAJAC

DEFENDANT: CARL PASQUANTINO

CASE NUMBER: JFM-00-0202

ADDITIONAL COUNTS OF CONVICTION

| Title & Section | Nature of Offense | Date Offense Concluded | Count Number(s) |
|---|---|---|---|
| 18:1343 & 2 | WIRE FRAUD; AIDING & ABETTING | 6/5/99 | 2 |
| " | WIRE FRAUD; AIDING & ABETTING | 9/20/99 | 3 |
| " | WIRE FRAUD; AIDING & ABETTING | 9/28/99 | 4 |
| " | WIRE FRAUD; AIDING & ABETTING | 10/2/99 | 5 |
| " | WIRE FRAUD; AIDING & ABETTING | 10/16/99 | 6 |



IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of 57 months as to counts 1-6 to run concurrently with each other.

☐ The court makes the following recommendations to the Bureau of Prisons:

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at ____ a.m./p.m. on ____

☐ as notified by the United States Marshal.

☒ The defendant shall surrender, at his/her own expense, to the institution designated by the Bureau of Prisons at the date and time specified in a written notice to be sent to the defendant by the United States Marshal. If the defendant does not receive such a written notice, defendant shall surrender to the United States Marshal:

☒ within 30 days after the effective date of the mandate.

A defendant who fails to report either to the designated institution or to the United States Marshal as directed shall be subject to the penalties of Title 18 U.S.C. § 3146. If convicted of an offense while on release, the defendant shall be subject to the penalties set forth in 18 U.S.C. § 3147. For violation of a condition of release, the defendant shall be subject to the sanctions set forth in Title 18 U.S.C. § 3148. Any bond or property posted may be forfeited and judgment entered against the defendant and the surety in the full amount of the bond.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____ at _____, with a certified copy of this judgment.

_____

United States Marshal

By: _____

Deputy U.S. Marshal

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 3 years as to counts 1-6 to run concurrently with each other.

The defendant shall comply with all of the following conditions:

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

STATUTORY CONDITIONS OF SUPERVISED RELEASE

The defendant shall not commit any federal, state or local crime.

In any felony case, the defendant shall not possess a firearm as defined in 18 U.S.C. § 921.

The defendant shall not illegally use or possess a controlled substance.

The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer.



☐ The above drug testing condition is suspended based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)

If this judgment imposes any criminal monetary penalty, including special assessment, fine, or restitution, it shall be a condition of supervised release that the defendant pay any such monetary penalty that remains unpaid at the commencement of the term of supervised release in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment. The defendant shall notify the court of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay restitution, fines, or special assessments.

STANDARD CONDITIONS OF SUPERVISION

1) The defendant shall not leave the judicial district without the permission of the court or probation officer;
2) The defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4) The defendant shall support his or her dependents and meet other family responsibilities;
5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
6) The defendant shall notify the probation officer ten days prior to any change in residence or employment;
7) The defendant shall refrain from excessive use of alcohol;

8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;

9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any persons convicted of a felony unless granted permission to do so by the probation officer;

10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;

11) The defendant shall notify the probation officer within 72 hours of being arrested or questioned by a law enforcement officer;

12) The defendant shall notify the probation officer within 72 hours of being charged with any offense, including a traffic offense;

13) The defendant shall not enter into any agreement to act as an informer or special agent of a law enforcement agency without the permission of the court;

14) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendants's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

## SUPERVISED RELEASE ADDITIONAL CONDITIONS

The defendant shall satisfactorily participate in a treatment program approved by the probation officer relating to substance and/or alcohol abuse, which may include evaluation, counseling, and testing as deemed necessary by the probation officer.



## CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth on Sheet 5, Part B.

| | Assessment | Fine | Restitution |
|---|---|---|---|
| Totals: | $ 600.00 ($100.00 as to each count) | $ - | $ |

☐ If applicable, restitution amount ordered pursuant to plea agreement. . . . . $

## FINE

The defendant shall pay interest on any fine of more than $2,500, unless the fine is paid in full before the 15th day after the date of judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 5, Part B may be subject to penalties for default and delinquency pursuant to 18 U.S.C. § 3612(g).

☒ The court has determined that the defendant does not have the ability to pay a fine; therefore, a fine is waived.

☐ The court has determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ The interest requirement is waived.

☐ The interest requirement is modified as follows:

## RESTITUTION

☐ The determination of restitution is deferred until _____. An Amended Judgment in a Criminal Case will be entered after such determination.

☐ The defendant shall make restitution to the following payees in the amounts listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless specified otherwise in the priority order or percentage payment column below.

| Name of Payee | Amount of Restitution Ordered | Priority Order or Percentage of Payment |
|---|---|---|

SCHEDULE OF PAYMENTS

Payments shall be applied in the following order: (1) assessment; (2) restitution; (3) fine principal; (4) cost of prosecution; (5) interest; and (6) penalties.

Payment of the total fine and other criminal monetary penalties shall be due as follows:

A ☒ In full immediately; or

B ☐ $____ immediately, balance due (in accordance with C, D, or E); or

C ☐ Not later than_____; or

D ☐ Installments to commence_____ day(s) after the date of this judgment.

E ☐ In____ (*e.g. equal weekly, monthly, quarterly*) installments of $____ over a period of _____ year(s) to commence when the defendant is placed on supervised release.

The defendant will receive credit for all payments previously made toward any criminal monetary penalties imposed.

Unless the court expressly orders otherwise, if this judgment imposes a period of imprisonment, payment of criminal monetary penalties shall be due during the period of imprisonment through the Bureau of Prisons' Inmate Financial Responsibility Program.



If the entire amount of criminal monetary penalties is not paid prior to the commencement of supervision, the balance shall be paid:

☐ in equal monthly installments during the term of supervision; or

☐ on a nominal payment schedule of $_____ per month during the term of supervision.

The U.S. Probation officer may recommend a modification of the payment schedule depending on the defendant's financial circumstances.

Special instructions regarding the payment of criminal monetary penalties:

☐ Joint and Several with:

☐ The defendant shall pay the following costs of prosecution and/or court costs:

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

STATEMENT OF REASONS

☒ The court adopts the factual findings and guideline application in the presentence report.

OR

☐ The court adopts the factual findings and guideline application in the presentence report except (see attachment, if necessary):

Guideline Range Determined by the Court (before departures):

Total Offense Level: 25
Criminal History Category: 1
Imprisonment Range: 57 to 71 Months
Supervised Release Range: 2 to 3 Years

Fine Range: $ 10,000.00 to $ 1,500,000.00

☒ Fine waived or below the guideline range because of inability to pay.

Total Amount of Restitution: $0.00

Restitution is not ordered (or only partial restitution is ordered) because:

*For all offenses regardless of when committed*:

☒ Consideration of restitution not mandated by statute and not appropriate under facts of the case

☐ No identifiable victim has suffered physical injury or pecuniary loss

☐ Other (see attachment, if necessary)

*For offenses committed prior to April 24, 1996*:

☐ Financial circumstances of the defendant

☐ Disproportionate complication/prolongation of the sentencing process

*For offenses against property committed on or after April 24, 1996*:

☐ Excessively large number of identifiable victims

☐ Disproportionate complication/prolongation of the sentencing process

*For offenses committed on or after April 24, 1996 other than crimes of violence or offenses against property or relating to tampering with consumer products*:

☐ Financial circumstances of the defendant

☒ The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by the application of the guidelines.

OR



☐ The sentence is within the guideline range, that range exceeds 24 months, and the sentence is imposed for the following reason(s):

☐ The sentence departs from the guideline range:

☐ upon motion of the government, as a result of defendant's substantial assistance.

☐ for the following specific reason(s):

# United States District Court

District of Maryland

Case Number: JFM-00-0202

UNITED STATES OF AMERICA

v.

ARTHUR HILTS

## JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed on or After November 1, 1987)

Defendant's Attorney: ISAAC JOE, JR.

Assistant U.S. Attorney: GREGORY WELSH

THE DEFENDANT:

☐ pleaded guilty to count(s) ____

☐ pleaded nolo contendere to count(s) ____ which was accepted by the court.

☒ was found guilty on counts One (1) after a plea of not guilty.

| Title & Section | Nature of Offense | Date Offense Concluded | Count Numbers |
|---|---|---|---|
| 18:1343 | WIRE FRAUD | 3/9/99 | 1 |

The defendant is adjudged guilty and sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.



☐ The defendant has been found not guilty on count(s), ____

☐ Count(s) ____ (is)(are) dismissed on the motion of the United States.

IT IS FURTHER ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Defendant's SSN: 132-52-8312
Defendant's Date of Birth: 5-31-58
Defendant's U.S.M. No.: N/A

JUNE 8, 2001
Date of Imposition of Judgment

Defendant's Residence Address:
6283 NASH ROAD
SANBORN, NEW YORK 14132

/s/ J. Frederick Motz June 13, 2001
J. Frederick Motz, Chief
United States District Judge

Defendant's Mailing Address:
SAME AS ABOVE

Name of Court Reporter: MARY ZAJAC

DEFENDANT: ARTHUR HILTS

CASE NUMBER: JFM-00-0202

## IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of 21 months as to counts 1-6 to run concurrently with each other.

☐ The court makes the following recommendations to the Bureau of Prisons:

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at ____ a.m./p.m. on ____ .

☐ as notified by the United States Marshal.

☒ The defendant shall surrender, at his/her own expense, to the institution designated by the Bureau of Prisons at the date and time specified in a written notice to be sent to the defendant by the United States Marshal. If the defendant does not receive such a written notice, defendant shall surrender to the United States Marshal:

☒ within 30 days after the effective date of the mandate .

A defendant who fails to report either to the designated institution or to the United States Marshal as directed shall be subject to the penalties of Title 18 U.S.C. § 3146. If convicted of an offense while on release, the defendant shall be subject to the penalties set forth in 18 U.S.C. § 3147. For violation of a condition of release, the defendant shall be subject to the sanctions set forth in Title 18 U.S.C. § 3148. Any bond or property posted may be forfeited and judgment entered against the defendant and the surety in the full amount of the bond.



## RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____ at _____, with a certified copy of this judgment.

_____

United States Marshal

By: _____

Deputy U.S. Marshal

## SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 2 years

The defendant shall comply with all of the following conditions:

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

## STATUTORY CONDITIONS OF SUPERVISED RELEASE

The defendant shall not commit any federal, state or local crime.

In any felony case, the defendant shall not possess a firearm as defined in 18 U.S.C. § 921.

The defendant shall not illegally use or possess a controlled substance.

The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer.

☒ The above drug testing condition is suspended based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)

If this judgment imposes any criminal monetary penalty, including special assessment, fine, or restitution, it shall be a condition of supervised release that the defendant pay any such monetary penalty that remains unpaid at the commencement of the term of supervised release in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment. The defendant shall notify the court of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay restitution, fines, or special assessments.

## STANDARD CONDITIONS OF SUPERVISION

1) The defendant shall not leave the judicial district without the permission of the court or probation officer;
2) The defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4) The defendant shall support his or her dependents and meet other family responsibilities;
5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
6) The defendant shall notify the probation officer ten days prior to any change in residence or employment;
7) The defendant shall refrain from excessive use of alcohol;
8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;



9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any persons convicted of a felony unless granted permission to do so by the probation officer;
10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11) The defendant shall notify the probation officer within 72 hours of being arrested or questioned by a law enforcement officer;
12) The defendant shall notify the probation officer within 72 hours of being charged with any offense, including a traffic offense;
13) The defendant shall not enter into any agreement to act as an informer or special agent of a law enforcement agency without the permission of the court;
14) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendants's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

## CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth on Sheet 5, Part B.

| | Assessment | Fine | Restitution |
|---|---|---|---|
| Totals: | $ 100.00 | $ | $ |

☐ If applicable, restitution amount ordered pursuant to plea agreement. . . . . $

The defendant shall pay interest on any fine of more than $2,500, unless the fine is paid in full before the 15th day after the date of judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 5, Part B may be subject to penalties for default and delinquency pursuant to 18 U.S.C. § 3612(g).

☒ The court has determined that the defendant does not have the ability to pay a fine; therefore, a fine is waived.

☐ The court has determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ The interest requirement is waived.

☐ The interest requirement is modified as follows:

RESTITUTION

☐ The determination of restitution is deferred until _____. An Amended Judgment in a Criminal Case will be entered after such determination.

☐ The defendant shall make restitution to the following payees in the amounts listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless specified otherwise in the priority order or percentage payment column below.

| Name of Payee | Amount of Restitution Ordered | Priority Order or Percentage of Payment |
|---|---|---|



SCHEDULE OF PAYMENTS

Payments shall be applied lied in the following order: (1) assessment; (2) restitution; (3) fine principal, (4) cost of Prosecution; (5) interest; and (6) penalties.

Payment of the total fine and other criminal monetary penalties shall be due as follows:

A ☒ In full immediately; or

B ☐ $____ immediately, balance due (in accordance with C, D, or E); or

C ☐ Not later than_____; or

D ☐ Installments to commence_____ day(s) after the date of this judgment.

E ☐ In____ (*e.g. equal weekly, monthly, quarterly*) installments of $____ over a period of _____ year(s) to commence when the defendant is placed on supervised release.

The defendant will receive credit for all payments previously made toward any criminal monetary penalties imposed.

Unless the court expressly orders otherwise, if this judgment imposes a period of imprisonment, payment of criminal monetary penalties shall be due during the period of imprisonment through the Bureau of Prisons' Inmate Financial Responsibility Program.

If the entire amount of criminal monetary penalties is not paid prior to the commencement of supervision, the balance shall be paid:

☐ in equal monthly installments during the term of supervision; or

☐ on a nominal payment schedule of $_____ per month during the term of supervision.

The U.S. Probation officer may recommend a modification of the payment schedule depending on the defendant's financial circumstances.

Special instructions regarding the payment of criminal monetary penalties:

- ☐ Joint and Several with:
- ☐ The defendant shall pay the following costs of prosecution and/or court costs:
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

## STATEMENT OF REASONS

- ☐ The court adopts the factual findings and guideline application in the presentence report.

OR

- ☒ The court adopts the factual findings and guideline application in the presentence report except (see attachment, if necessary):

Guideline Range Determined by the Court (before departures):

Total Offense Level: 17
Criminal History Category: 1
Imprisonment Range: 24 to 30 Months
Supervised Release Range: 2 to 3 .Years
Fine Range: $ 5,000.00 to $ 50,000.00

- ☒ Fine waived or below the guideline range because of inability to pay.

Total Amount of Restitution: $0.00

Restitution is not ordered (or only partial restitution is ordered) because:

*For all offenses regardless of when committed:*



- ☒ Consideration of restitution not mandated by statute and not appropriate under facts of the case
- ☐ No identifiable victim has suffered physical injury or pecuniary loss
- ☐ Other (see attachment, if necessary)

*For offenses committed prior to April 24, 1996:*

- ☐ Financial circumstances of the defendant
- ☐ Disproportionate complication/prolongation of the sentencing process

*For offenses against property committed on or after April 24, 1996:*

- ☐ Excessively large number of identifiable victims
- ☐ Disproportionate complication/Prolongation of the sentencing process

*For offenses committed on or after April 24, 1996 other than crimes of violence or offenses against property or relating to tampering with consumer products:*

- ☐ Financial circumstances of the defendant
- ☐ The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by the application of the guidelines.

OR

- ☐ The sentence is within the guideline range, that range exceeds 24 months, and the sentence is imposed for the following reason(s):
- ☐ The sentence departs from the guideline range:
  - ☐ upon motion of the government, as a result of defendant's substantial assistance.
  - ☐ for the following specific reason(s):